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(25,463)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 633.

THE HARTFORD LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

ROSA BARBER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print
Præcipe for record	a	a
Proceedings in the circuit court of Johnson county	c	b
Judgment	c	b
Order granting appeal	c	b
Approval of bond	e	b
Clerk's certificate to judgment roll	e	b
Abstract of record from circuit court	1	1
Caption	1	1
Amended petition	1	1
Amended answer	3	3
Exhibit A—Certified copy of application of Frank Barber for insurance, &c.	13	13
Exhibits B and C—Judgment of superior court of New Haven county, Connecticut, in case of Dresser *et al.* *vs.* Hartford Life Insurance Co.	22	22
Reply	49	49
Motion to strike out part of reply	52	52
Trial	52	52

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1916.

	Original.	Print
Motions for new trial and in arrest of judgment	52	5
Appeal	53	5
Affidavit for appeal	53	5
Bill of exceptions filed	54	5
Bill of exceptions	55	5
Amendments to answer	55	5
Exhibit "A"—Policy in suit	56	5
"B"—File-mark of original petition	57	5
"C"—Answer filed by defendant on January 11, 1912 (not set out)	57	5
Exhibit No. 1—Stipulation (not set out)	57	5
No. 2—Letter from T. F. Lawrence to Morrow & Kelley, dated July 8, 1910	57	5
No. 3—File-mark on answer	58	5
No. 4—File-mark on amended answer	58	5
No. 5—Certified copy of annual statement of Hartford Life Insurance Co. (not set out)	59	5
Testimony of James A. Kemper	60	6
Testimony of R. M. Robertson	63	6
Plaintiff rests	63	6
Demurrer to evidence	63	6
Exhibit No. 6—Stipulation of facts, &c.	64	6
Testimony of Thomas F. Lawrence	67	6
Exhibit A—Charter of the Hartford Life and Annuity Insurance Co.	68	6
F—Policy form No. 3	85	8
G—Policy form	86	8
H—Policy form No. 3½	90	9
I—Old table rate	102	10
J—New table rate	103	10
K—Calculation of call No. 126	105	10
M—Notice of call 126	125	12
N—Death list on call 126	130	13
O—Envelope addressed to Frank Barber	132	13
P—Assessment register	135	13
T'—Registered letter notice	138	13
T"—Special notice of quarterly call No. 126	139	13
V—Registry receipt	141	14
W—Company's letter to Barber, March 22, 1906	143	14
X—Barber's letter to company, December 3, 1909	144	14
Y—Company's letter to Barber, December 16, 1909	145	14
Exhibit AA—Compilation on certificate No. 174,416	147	14
CC—Compilation on certificate No. 174,416	149	14
DD—Mortality calls and death losses	152	15
EE—Deposits with Security Company	156	15
FF—Income from Security Company	158	15

	Original.	Print
GG—Letter from Barber to company (no date)	170	170
HH—Letter to Barber from company, March 12, 1910	171	171
JJ—Dividends in reduction of calls	172	172
KK—Act of legislature, April 10, 1889	173	173
LL—Policy form, Women's Division	177	177
MM—Balances in various funds	190	190
PP—Check to State treasurer, April 15, 1910	268	268
QQ—Check to State treasurer, April 15, 1911	268	268
RR—Unpaid claims outstanding	273	273
SS—Death claims, January, 1910	275	275
Testimony of Arthur M. Bunce	282	282
Exhibit 7—Affidavit of Thomas F. Lawrence	299	299
Offers of evidence, &c.	303	303
Defendant rests	306	306
Plaintiff's given instructions Nos. 1 and 2	307	307
Defendant's given instructions Nos. 5, 6, 9, and 12	308	308
Defendant's refused instructions	310	310
Instructions as to form of verdict	317	317
Verdict	317	317
Motion for new trial	318	318
Motion in arrest of judgment	322	322
Motions for new trial and in arrest of judgment overruled	322	322
Defendant's proposed corrections to bill of exceptions	323	323
Plaintiff's objections to proposed corrections of bill of exceptions	324	324
Defendant withdraws proposed changes to bill of exceptions	324	324
Judge's certificate to bill of exceptions	325	325
Transcript filed	325	325
Appendix—Exemplification of judgment roll in Dresser *vs.* Hartford Insurance Co.	331	331
Appellant's additional abstract of record	336	329
Annual statement of the Hartford Life Insurance Co. for year ending December 31, 1909	337	329
Defendant's Exhibit 8—Transcript of record in the superior court of New Haven county, Connecticut, in case of Dresser *et al. vs.* The Hartford Life Insurance Co. (omitted in printing)	342	
Index (omitted in printing)	343	
Writ of attachment and complaint (omitted in printing)	344	
Exhibit B—Certificate of membership, No. 139,699, &c. (omitted in printing)	362	
Exhibit A—Circular concerning "Safety Fund" (omitted in printing)	384	
Amendment to complaint, November 8, 1906 (omitted in printing)	390	

	Original.	Print
Amendment to complaint, November 10, 1907 (omitted in printing)		390
Amendment to Exhibit B—Table of mortality ratios (omitted in printing)		391
Demurrer of Hartford Insurance Co. (omitted in printing)		392
Demurrer of Charles H. Bacall (omitted in printing)		397
Order on demurrer (omitted in printing)		399
Motion to amend complaint (" ")		399
Amendment to complaint, December 4, 1906 (omitted in printing)		400
Demurrer of Security Co. (omitted in printing)		401
Memorandum of decision on demurrers (omitted in printing)		405
Judgment (omitted in printing)		417
Plaintiff's appeal and assignment of errors (omitted in printing)		420
Index (omitted in printing)		427
Suggestion of death of Charles H. Bacall (omitted in printing)		429
Stipulation to drop action as to Charles H. Bacall (omitted in printing)		429
Answer of Hartford Insurance Co. (omitted in printing)		430
Motion for a disclosure, &c. (omitted in printing)		443
Reply (" ")		448
Demurrer of George E. Keeney (" ")		449
Memorandum on demurrer to motion, &c. (omitted in printing)		453
Motion for trial on certain issues (omitted in printing)		454
Disclosure of defendant, George E. Keeney (omitted in printing)		455
Exhibit 1—Statement (omitted in printing)		457
Plea of George E. Keeney to motion for disclosure (omitted in printing)		460
Motion to strike out (omitted in printing)		463
Memorandum of decision (" ")		467
Notices of appeal (" ")		469
Answer of Security Co. (" ")		472
Exhibit 1—Resolution approved April 10, 1889 (omitted in printing)		476
Demurrer to answer of Security Co. (omitted in printing)		476
Motion for disclosure by Security Co. (omitted in printing)		480
Disclosure of Security Co. (omitted in printing)		482
Memorandum on demurrers to defense of Security Co. (omitted in printing)		558
Motion of extension of time to file pleadings (omitted in printing)		559

	Original.	Print
Reply to fourth defense of Security Co. (omitted in printing)	559	
Amendments to answer of Security Co. (omitted in printing)	560	
Cross-complaint of Security Co. (omitted in printing)	562	
Exhibit 2—Modification of original contract, &c. (omitted in printing)	567	
Amendment to answer of Security Co. (omitted in printing)	569	
Cross-complaint of Security Co. (omitted in printing)	571	
Exhibit 2—Modification of original contract (omitted in printing)	575	
Answer to cross-complaint....(omitted in printing)..	578	
Cross-complaint of Hartford Life Insurance Co. (omitted in printing)	579	
Exhibit A—Resolution approved April 10, 1889 (omitted in printing)	584	
Service and sheriff's return (omitted in printing)	585	
Answer to cross-complaint of Hartford Insurance Co. (omitted in printing)	586	
Answer of Security Co. to cross-complaint, &c. (omitted in printing)	587	
Amplification of certain claims, &c. (omitted in printing)	588	
Demurrer to cross-complaint...(omitted in printing)..	589	
Memorandum, Curtis, J.....(" ")..	594	
Judgment, Shumway, J.....(" ")..	601	
Judgment, Curtis, J.....(" ")..	605	
Application as to counsel fees, &c. (omitted in printing)	620	
Answer of Hartford Insurance Co. *et al.* to application for counsel fees, &c.....(omitted in printing)..	621	
Return of payment under order (omitted in printing)..	624	
Appendix—Exemplification of the judgment roll (omitted in printing)	626	
Additional abstract of record, statement, and brief of respondent.....(omitted in printing)..	628	
Annual statement of Hartford Insurance Co. for year ending December 31, 1909.....(omitted in printing)..	628	
Assignment of errors	631	333
Judgment	634	334
Opinion, Brown, C.	635	335
Order showing filing and overruling of motions for rehearing and to transfer to court in banc	653	347
Appellant's motion for rehearing	654	347
Appellant's motion to transfer to court in banc	678	360
Assignment of errors	685	363
Petition for allowance of writ of error and allowance	692	367
Bond on writ of error	701	373

	Original.	Print
Writ of error	703	363
Certificate of lodgment	704*a*	375
Citation and service	705	375
Clerk's certificate	706	376
Return to writ of error	707	376
Statement of points to be relied upon and designation by plaintiff in error of parts of record to be printed, with proof of service of same	708	377
Amendment to designation by plaintiff in error of parts of record to be printed and proof of service of same	715	380

a In the Supreme Court of the State of Missouri.

No. 17664.

ROSA BARBER, Plaintiff-Respondent,
v.
HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

Præcipe for Transcript.

To the Clerk of the Supreme Court of the State of Missouri:

You will please prepare a transcript of record upon the writ of error allowed on the 7th day of August, 1916, in the above entitled cause, for a review by the Supreme Court of the United States, and include in such transcript the following papers:

A complete copy of the record on appeal from the trial court and filed in your office, and upon which said cause was heard and determined in said Supreme Court of the State of Missouri, including certified copy of judgment appealed from, abstracts of record prepared by both parties and appellant's additional abstract.

You will also include in said transcript of record the following:

1. Copy of appellant's assignment of errors in said Supreme Court of Missouri, as set forth on pages 19 to 21 inclusive in Appellant's Brief filed in the Supreme Court of Missouri.
2. Copy of the opinion of the Supreme Court of Missouri.
3. Copy of appellant's motion for rehearing.
4. Copy of appellant's motion to transfer to court en banc.
5. Order denying appellant's motion for rehearing.
6. Order denying appellant's motion to transfer to court en banc.
7. The original assignment of errors, with prayer for reversal hereto attached, filed August 7, 1916, with the petition for writ of error from the Supreme Court of the United States.
8. The original petition for writ of error from the Supreme Court of the United States, together with the order of allowance.
9. Copy of supersedeas bond and of order approving same.
10. The original writ of error with the certificate of allowance thereof.
11. Your certificate of the lodgment of copy of writ of error from the Supreme Court of the United States for use of the defendant in error and the lodgment of original bond.
12. The original citation with service thereof.
13. Your certificate of the authentication of record.
14. Your return to writ of error and statement of costs.

FRED'K W. LEHMANN,
JAMES C. JONES,
Attorneys for Hartford Life Insurance Company, Defendant-Appellant.

The undersigned, counsel for Rosa Barber, plaintiff-respondent, hereby acknowledges service of a copy of the foregoing præcipe for transcript this 9th day of August, 1916.

NICK M. BRADLEY,
ROBERT KELLY,
CHAS. E. MORROW,
Counsel for Rosa Barber, Plaintiff-Respondent.

[Endorsed:] No. 17,664. In the Supreme Court of the State of Missouri. Rosa Barber, Plaintiff-Respondent, v. Hartford Life Insurance Company, Defendant-Appellant. Præcipe for Transcript. Filed Aug. 10, 1916. J. D. Allen, Clerk. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

c Be it remembered that on January 20th 1913, there was filed in the office of the Clerk of this Court, a certified copy of the judgment and order granting the appeal from the Circuit Court of Johnson County, wherein Rosa Barber was Plaintiff-Respondent and The Hartford Life Insurance Company, was Defendant-Appellant, which said short form transcript is in words and figures as follows:

STATE OF MISSOURI,
County of Johnson, ss:

Be it remembered, That on the Third day of January, 1913, at the October Term, A. D. 1912, of the Circuit Court in and for the County of Johnson, in the County aforesaid, it being the twenty-fourth day of said term, the following among other proceedings were had, made and entered of record in the said Court, to-wit:

#4619.

ROSA BARBER, Plaintiff,

HARTFORD LIFE INSURANCE COMPANY, Defendant.

Judgment.

Now at this day, come the parties aforesaid, by their respective attorneys herein, and again comes the jury trying this cause, and being called and all appearing in court, the trial of this cause is resumed; and the jury after hearing all the evidence, are instructed by the court as — the law in this case; whereupon the argument of counsel is made and the jury retire to their room in charge of the sheriff, to consider of their verdict; and after due deliberation the jury having agreed upon a verdict, they are conducted into court by the sheriff having them in charge, and the jury in open court, return the following verdict in this cause, to-wit, "We, the jury, find the issues in favor of the plaintiff and assess her damages at the sum

of $2276.00, together with the sum of $200.00 for vexatious delay, and the sum of $500.00, for attorneys fees, making in the aggregate the sum of $2976.00. R. C. McVay, Foreman."

It is therefore ordered and adjudged by the court here, that the said plaintiff have and recover of and from the said defend-
d ant, Hartford Life Insurance Company, the said sum of Two Thousand Nine Hundred and Seventy-six ($2976.00) Dollars, assessed and found by the jury to be due and owing as aforesaid, together with her costs herein accrued, and that she have execution therefor. And now said Defendant files its objections, in writing, to entry of judgment against it personally; and said defendant files its motion for a new trial of this cause; which said motion is taken up and submitted to the Court, and the Court after hearing and duly considering the same, doth order that said motion for a new trial be, and hereby is overruled; And said Defendant files its motion in arrest of judgment, which said motion is now submitted to the Court, and the court after hearing and duly considering the same, doth order that said motion in arrest of judgment be, and hereby is overruled. Whereupon the said Defendant, by leave of the Court, takes until on or before May 1st, 1913, in which time to file its Bill of Exceptions in this cause; And now said defendant, by its attorney and agent in this cause, files its motion and affidavit for an appeal in this cause to the Supreme Court of the State of Missouri, and now makes a deposit of the docket fee of ten dollars with the clerk of this court whereupon the court after duly considering the same doth sustain said motion and doth order that said defendant be, and hereby is, allowed an appeal in this cause to the Supreme Court of the State of Missouri, and that the amount of the appeal bond be, and hereby is, fixed at the sum of $6000.00, and that defendant be and is allowed ten days after the adjournment of this term of this court to file the same, subject to the approval of the Clerk of this Court in vacation thereof.

And afterwards, to-wit on the 8th day of January, 1913, it being in time of the vacation of said Circuit Court, the following further proceedings were had, made and entered of record in said cause, to-wit:

e

#4619.

ROSA BARBER, Plaintiff,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant.

Appeal Bond Filed.

Now on this 8th day of January, 1913, Comes the defendant aforesaid, by its attorney, before the undersigned clerk of this court, in the vacation thereof, and presents to the clerk, for his approval and filing, its appeal bond in the above entitled cause, in the sum of Six Thousand Dollars, and it appearing to said clerk, that said bond is in due form and conditioned as required by law, and is signed by

the defendant, Hartford Life Insurance Company, by James C. Jones, Jr., Its Attorney & Agent; and American Surety Co. of New York, by Emmett M. Myer Resident Vice President, and Attest: Geo. E. Egger, Resident Assistant Secretary; said bond is by said clerk approved and said Defendant now files said bond in the office of the undersigned clerk of said circuit court, and is made a part of the record in the above entitled cause.

W. H. HENSHAW, *Clerk.*

STATE OF MISSOURI,
County of Johnson, ss:

I, W. H. Henshaw, Clerk of the Circuit Court within and for the County of Johnson, in the State aforesaid, do hereby certify that the above and foregoing is a full, true and complete copy of the record entry of the judgment of said court; the filing of objections to entry of judgment; the filing of a motion for new trial of cause; the order overruling said motion; the filing of a motion in arrest of judgment, and the order overruling said motion; the order of leave to file a bill of exceptions; the filing of a motion and affidavit for appeal; the deposit of the docket fee; the order sustaining said motion for appeal; the order allowing defendant an appeal; the order fixing amount of the appeal bond, and leave to file the same; and the filing of an appeal bond; all of which is entered of record
f at the term of said circuit court, and on the days therein stated, in the above entitled cause, as the same now appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at — office in the City of Warrensburg, in the County and State aforesaid, this 17th day of January, A. D. 1913.

[SEAL.] W. H. HENSHAW, *Clerk.*

Fees of W. H. Henshaw, Clerk:

For above copy, Ctf. & Seal...	$1.75
Docket Fee $10.00 Paid to Clerk for Clerk of Sup. Ct...	10.00
	$11.75

IN THE

SUPREME COURT OF MISSOURI.

OCTOBER TERM, 1915.

ROSA BARBER,
Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY,
Defendant-Appellant.

No. 17,664.

APPEAL FROM THE CIRCUIT COURT OF JOHNSON COUNTY.
HONORABLE C. A. CALVIRD. SPECIAL JUDGE.

ABSTRACT OF RECORD.

This is an action on an insurance policy commenced June 17, 1911, and tried on the amended petition, which is as follows (omitting caption and signature):

AMENDED PETITION.

Plaintiff for her amended petition for her cause of action against the defendant states that said defend-

ant is a corporation duly incorporated according to law and at all times herein stated was engaged in the business of life insurance in the State of Missouri.

That at the time the contract or policy of insurance was entered into by defendant as hereinafter stated the corporate name of defendant was The Hartford Life and Annuity Insurance Company; that since said contract was entered into defendant has changed its name and is now doing business under the corporate name of the Hartford Life Insurance Company.

On the 4th day of September, 1893, the defendant, in consideration of the payment by Frank Barber of a certain sum of money and in consideration of the agreement by the said Frank Barber to pay it thereafter certain sums of money as the same might become due, executed and delivered to said Frank Barber a certain contract or policy of insurance whereby it agreed to pay upon the death of said Frank Barber to his wife, the plaintiff, if living, the sum of two thousand dollars ($2,000), which said policy is numbered 174416 and is herewith filed.

Plaintiff alleges that said Frank Barber died on the 5th day of June, 1910; that up to the time of his death the said Frank Barber had complied with all the conditions, stipulations and requirements in said contract on his part to be performed by him.

That in addition to the considerations paid by said Frank Barber hereinbefore mentioned, the said Frank Barber at or soon after the execution of said contract deposited with defendant the sum of $20.00, which was received by defendant and placed to the credit of said Frank Barber, which has ever since been retained and is now retained by defendant and is now in the custody and under the control of defendant as a de-

posit. At the time of the death of said Frank Barber that upon said $20.00 deposit certain interest had accrued, which together with said deposit was in the hands and under the control of the defendant and at the time of the death of Frank Barber for the benefit of said Frank Barber.

That plaintiff was the wife and is now the widow of said Frank Barber; that since the death of Frank Barber she has complied with all the requirements in said contract required of her; that said defendant, though requested so to do, and though the sum of $2,000.00 is due the plaintiff from defendant, yet so it is the defendant has hitherto vexatiously failed and refused and doth still vexatiously fail and refuse to pay the same, so that the same is now due plaintiff from defendant and remains unpaid.

Wherefore, plaintiff prays judgment against the defendant for said sum of $2,000.00 with interest thereon at the rate of six per cent per annum from the ..... day of September, 1910, together with the penalty of ten per cent for its vexatious refusal to pay said money, and also for a reasonable attorney's fee, which plaintiff alleges to be $500.00, with interest and for costs.

Thereafter, on November 25, 1912, defendant filed its amended answer to said amended petition, which is as follows (omitting caption and signature):

AMENDED ANSWER.

Now comes the Hartford Life Insurance Company, defendant in the above-entitled cause, and for its amended answer to the amended petition filed herein.

Admits that it is a corporation, and that at all times herein stated it was engaged in the business of life insurance in the State of Missouri.

Admits that at the time the contract or policy of insurance was entered into the defendant's name was the Hartford Life & Annuity Insurance Company, and that since said contract or policy was issued the defendant has changed its name and is named the Hartford Life Insurance Company.

Admits that on the 4th day of September, 1893, the defendant executed and delivered to Frank Barber that certain contract or policy of insurance No. 174416, which is filed with plaintiff's petition, but denies that the consideration for the issue of said policy or contract is as set forth in the plaintiff's petition.

Admits that defendant, by said contract or policy, for the consideration and upon the conditions therein named, agreed to pay, upon the death of Frank Barber, to his wife, plaintiff, if living, the sum of $2,000.00.

Admits that the said Frank Barber died on the 5th day of June, 1910.

Admits that up to the time of his death the said Frank Barber had complied with all the conditions, stipulations and requirements in said policy on his part to be performed by him, except in the particulars hereinafter affirmatively pleaded.

Admits that the plaintiff was the wife and is now the widow of Frank Barber.

Admits that since the death of Frank Barber the plaintiff has complied with all the requirements in said contract required of her.

Admits that demand has been made on the defendant for the sum of $2,000.00 and that payment thereof has been refused.

Admits that at the time of the issuance of said policy or contract and soon after the execution thereof the said Frank Barber deposited with the defendant the

sum of $20.00, but denies that the same was received by the defendant and placed to the credit of Frank Barber, and denies that said sum, or any part thereof, has ever been retained by or is now retained by defendant, or that said sum, or any part thereof, is in its custody or under its control as a deposit or otherwise.

Denies that upon said deposit of $20.00 any interest has accrued or that the said deposit, or the interest thereon, was in the hands of or under the control of the defendant at the time of the death of Frank Barber for the benefit of Frank Barber or otherwise.

Admits that it has refused to pay the plaintiff the sum of two thousand dollars, but denies that such refusal is vexatious or that it is liable to plaintiff for any sum by way of penalty because of such refusal.

And, having fully answered, defendant prays to go hence with its costs.

Further answering the petition, defendant alleges it is a corporation organized under the laws of Connecticut, and that on the 4th day of September, 1893, the said Frank Barber made a written and signed application to defendant for the policy or certificate sued on herein (a verified copy of which application is hereto attached, marked Exhibit "A"), and that in said application the said Frank Barber agreed as follows:

> "If I, or my representatives, shall omit or neglect to make any payment as required in respect of amount, place and time of payment by the conditions of such certificates, then the certificates to be issued hereon shall be null and void, and all money paid thereon shall be forfeited to said company."

Defendant alleges that it received and accepted said

application, and, on the faith of the agreement therein contained as above set forth, issued the policy or certificate sued on herein, which expressly refers to and makes said application a part of said certificate or policy, and by the terms of said policy it is expressly provided that it is issued in consideration of "the representations, agreements and warranties made in the application herefor, and of the admission fee paid, and of the sum of $10.00 on each $1,000.00 of the indemnity herein provided for, to be paid to said company as herein required, to create a safety fund as hereinafter described, and of $3.00 per annum on each $1,000.00 for expense dues, to be paid as hereinafter conditioned, and of the further payment of all mortality calls proportioned to the indemnity herein provided for levied against the herein named member to form a mortuary fund for the payment of all indemnity matured by deaths of members, which mortality calls, to be levied upon all the members in the department wherein this certificate is issued, whose certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity at the dates of such deaths, with due allowance for discontinuance of membership."

Defendant alleges that said certificate further provides:

> "2. The member agrees to pay said company, for expenses, dues of three dollars per annum on each $1,000 indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; or by *pro rata* installments of the same,

in advance, for periods of less than a year; and also agrees to pay said company, within thirty days from day on which notices bear date, all mortality calls determined as within set forth; the proceeds of which, less such charges as are herein prescribed and ten cents on each call for cost of collection, shall form the mortuary fund: And further agrees to pay said company during the first year of membership the sum of ten dollars on each $1,000.00 towards the safety fund, either in a single payment within sixty days from date thereof, or by equal installments thereof, monthly, during the first year of membership, commencing sixty days from the date hereof: In default of which payments towards the safety fund said company may for this purpose increase said mortality calls by amounts equal to any such due and unpaid installments; and, while the whole or any portion of such required payments shall remain unpaid, said company may apply toward payment thereof any unapplied sum standing to the credit of this certificate; but if the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax; and the proceeds of such mortality calls shall be charged with the member's proportionate share of fees actually paid by the company for medical examinations made in the first year of the membership hereby granted. All of which payments are to be made directly to the Home Office of said company, and not to agents, who are unauthorized to receive them."

Defendant alleges that in said policy or certificate it is expressly provided that the indemnity agreed to be

paid shall be payable out of the mortuary fund so to be created by assessments as above set forth and not otherwise.

Defendant alleges that said policy further provides:

> "3. The member further agrees and accepts this certificate upon the express condition that if either the annual dues, mortality calls, or safety fund deposit, as hereinbefore required, are not paid to said company on the day due, then this certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the safety fund."

Defendant further alleges that said policy provides:

> "5. The quarter days for the payment of mortality calls shall be the 1st day of March, June, September and December in each year, notices of which will be dated and mailed thirty days before such dates. No mortality call to fall due on the first quarter day following the date of this contract can be made. A notice directed to the address of the member, or other person designated by the member, appearing at the time on the company's books, shall be a sufficient notice of any required payment, and a certificate of the secretary, supported by affidavit of the person whose duty it was to perform the service, of such addressing and of mailing of notice in post office at Hartford shall be taken and admitted as conclusive evidence of such addressing and mailing and be admitted as conclusive proof of due notice to each and every person interested herein."

Defendant alleges that Frank Barber elected to pay

the dues of $3.00 per annum for each $1,000 of indemnity quarterly, in advance, and, from time to time after the issuance of said certificate, he paid his dues quarterly, in advance, and the mortuary assessments which were levied against him quarterly until January, 1910.

Defendant alleges that on the 29th day of January, 1910, the defendant duly made and levied against the said Frank Barber, under said policy, an assessment known and designated as quarterly call No. 126; that said assessment, including the taxes thereon payable to the State of Missouri, amounted to $13.09; that said assessment was made according to the table of graduated mortality ratios given on said policy to form the mortuary fund for the payment of all indemnity matured by death; that said assessment was proportioned to the maximum indemnity named in said certificate, was levied against all the members holding similar certificates, and was determined by the ages of members and the aggregate indemnity at the dates of such deaths, with due allowance for the discontinuance of membership, and was made and levied in all respects as required by said policy.

Defendant alleges that said notice of said assessment was duly given to the said Frank Barber, that the same was dated the 29th day of January, 1910, and was deposited in the post office at Hartford on said date, directed to the address of said Frank Barber as it appeared on the books of the defendant at that time; that at the same time and in the same manner and by the same notice it demanded of Frank Barber the payment of $1.50, the quarterly dues for the quarter ending with May 31, 1910; that Frank Barber failed to pay the said dues or said assessment within thirty days from the date on which said notice bore date, that

is to say, on or before March 1, 1910; that defendant extended the time for the payment of the same until March 5, 1910; that afterwards defendant agreed to accept payment of said dues and assessment if paid on or before March 20th, 1910, and so notified said Frank Barber; but defendant alleges that the said Frank Barber failed and neglected to pay said mortality call and failed to pay said dues either on or before March 1, 1910, March 5, 1910, or March 20, 1910, and payment of the same has never been made, and that, by the terms and provisions of said policy and application, the failure of said Frank Barber to pay said assessment as well as his failure to pay said dues, terminated said certificate or policy.

Defendant alleges that although the said Frank Barber lived until the 5th day of June, 1910, or for nearly four months after the forfeiture of the policy, by reason of the non-payment of the assessment and dues in March, 1910, he at no time considered said certificate in force, but at all times acquiesced in the forfeiture thereof, resulting from the non-payment of said mortality call or assessment, and abandoned all claims, rights or demands under said certificate or policy.

Defendant further alleges that the contract or certificate sued on is one of many similar certificates issued by the defendant to numerous other members of the safety fund department, men's division, of the defendant company; that each of said certificates provides, as does the certificate sued on, for the levy and collection of assessments, the proceeds of which are to constitute the mortuary fund referred to in the certificate sued on, from which, upon the death of the holder of any such certificate, the indemnity provided for herein is to be paid; that the indemnity provided for

in each of said certificates is payable only out of said mortuary fund and defendant is not otherwise liable for the indemnity provided for by said certificate; that under and by the terms of such certificate defendant is the trustee of said mortuary fund; that said certificates create an express trust as to such fund; members holding said certificates so long as they are in force and the members continue alive (and after the death of the member while the certificates are in force the beneficiaries designated therein) are the *cestuis que trust* of said mortuary fund; that said mortuary fund has always been maintained in the State of Connecticut; that said fund and the said trust under which it is held is subject to the control and direction of the courts of general jurisdiction of the State of Connecticut, and particularly of the Superior Court of New Haven County, and the Supreme Court of Errors of the State of Connecticut; that the manner in which said mortuary fund and the trust under which it is held shall be administered has been the subject of adjudication by the courts of general jurisdiction of the State of Connecticut, to-wit, by said Superior Court of New Haven County and the Supreme Court of Errors of the State of Connecticut in the case of Charles A. Dresser *et al.* v. Hartford Life Insurance Company, which said courts have jurisdiction over this defendant and over said fund, and in which case said courts adjudicated and directed how the said mortuary fund should be administered; that said action was brought by one Charles H. Dresser, a member of said safety fund department, and holding a certificate of membership similar to that sued on by the plaintiff in this case, which said action was brought by said Charles H. Dresser on his own behalf, as well as on behalf of

others similarly situated, including this plaintiff, to which action this plaintiff was thereby made a party and whose rights were therein fully adjudicated, and the decisions in which case are *res adjudicata* as to this plaintiff's rights in said safety fund and mortuary fund; that a copy of the decrees and judgments of said Superior Court of New Haven County are hereto attached, marked, respectively, Exhibits "B" and "C", and the opinion of said Supreme Court of Errors of the State of Connecticut referred to in said decrees will be found reported in 80 Conn. 681, to which reference is hereby made; that said mortuary fund and the trust thereby created is being administered by the defendant strictly in accordance with the terms of said certificates and in accordance with the directions and adjudications of said courts of Connecticut as shown by said decrees and opinions; that under the terms of said certificates and under the terms of said trust as construed and adjudicated by said courts defendant is without authority to pay out of said mortuary fund the amount of any certificate of membership where, as in the case of Frank Barber, the member has failed or refused to pay the assessment levied against him to maintain said fund.

Defendant, for further answer, denies that the defendant has vexatiously refused to pay the amount sued for; denies that $500.00 is a reasonable attorney's fee; denies that plaintiff is entitled to any damages or attorneys' fees, because defendant says that the statute of this State (section 7068) authorizing the imposition of damages and attorneys' fees is unconstitutional and void because in violation of Section 10, Article I, of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment to the Constitution of

the United States, and in violation of Section 30 of Article II, Section 10 of Article II of the Constitution of Missouri, and because the construction thereof by the courts of this State constitute a rule of judicial construction violative of said provisions of said State and Federal Constitutions, and because said section 7068, if applied to this case, and in its application to the facts of this case, denies the defendant due process of law as guaranteed to it by the said State and Federal Constitutions.

Wherefore, defendant shows to the Court that it is not liable to the plaintiff in this case and prays to be discharged with its costs.

EXHIBIT A TO ANSWER.

State of Missouri, } ss.
City of St. Louis. }

I hereby certify that I have carefully compared the copy of application attached hereto with the original application for policy No. 174416, and that the within paper is a true and correct copy of said original.

OTTILIE TRAUB.

Sworn to and subscribed before me this 29th day of October, 1912. My term expires December 28, 1914.

(SEAL) FRANK A. MOHR,
Notary Public, City of St. Louis, Mo.

Applicants and agents will please note particularly the instructions on lower margin of this page and in column 10. Answer every question in writing. Dashes to indicate a negative answer are not acceptable. Careful compliance with instructions will avoid delay.

9/4/93

No. 174416 Kind————
Do not fill above blanks

Agent————

General Agent—Mat. Zener
Send Certificate to No. 509 Olive St.
At St. Louis, Mo.

APPLICATION.

I, Frank Barber

(State name in full of the person upon whose life certificate is applied for)

hereby apply for a Certificate of Membership, limited to Two Thousand Dollars, in the Safety Fund System of the Hartford Life and Annuity Insurance Company, of Hartford, Conn., for the benefit of

ROSA BARBER

Name and Relationship

MY WIFE

who has an insurable interest in my life.

And I agree to make the Safety Fund Deposit according to the Company's requirements.

One-quarter of this Deposit is required to be paid on either the first day of March, June, September or December, which next follows the date on which first dues become payable. Remainder, by one-third of Mortality Calls until completed. Earlier payment may be made, but delays that vary the above rule will not be permitted. If applicant is for Women's Division, Deposit must be paid in proportionate installments, as

and when the dues are paid, so as to complete Deposit in first year of policy.

Do you desire to pay safety fund deposit in a single payment on the first day of March, June, September and December? No, as above in red.

(1) Your residence:

Place—St. Louis.
County————————
State—Missouri.

P. O. Address—No. 900 Chambers St.
(Give street and number of P. O. Box.)
(If in a different place from your residence give name of Post Office.)

(2) Your occupation, profession, or trade (give full particulars). Such terms as "Merchant", "Mechanic"; "Laborer", are not sufficiently explicit. Baker and confectioner.

Are spirituous or malt liquors sold by you, either as proprietor or employe? No.

Do you work at stone cutting, grinding, or polishing tools or metals; making explosives, or poisonous chemicals, or at any employment commonly known as "hazardous"? (Give full particulars.) No.

(3) Your age, also place and date of your birth.
Place of birth—Madison Co., Ill.
(Give town, county, and state or country.)
Year—1857. Month—Dec. Day—6th.
Age at last birthday—35.
(Be sure this agrees with year of birth.)

(4) Are you married or single? Married.

(5) In what companies, societies, or orders is your life now insured, and to what amount in each? $1,000, H. L. & A. Ins. Co.; $2,000, Catholic Knights.

(6) Has any company, society or order declined to grant you a policy or membership? If so, name them, and when? No.

(7) Have you ever been examined for life insurance or membership by any physician with an unfavorable result? No.

(8) Have you now or ever had any certificates in force in this Company? If so, state the amount, and number of each. No. 128293, $1,000.

(9) Have you now, or have you ever had any of the following affections or diseases: (Answer "Yes" or "No" opposite each.)

Spitting of Blood—No. Liver Complaint—No. Fever and Ague—Yes. Cancer, or any Tumors—No. Lumps, Swellings or Sores—No. Yellow Fever—No. Habitual Headache—No. Inflammation of Lungs—No. Chronic Cough—No. Neuralgia—No. Consumption—No. Rheumatism—No. Palpitation—No. Piles—No. Scrofula—No. Diseases of the Heart—No. Dyspepsia—No. Small Pox—No. Pleurisy—No. Syphilis—No. Paralysis—No. Apoplexy—No. Sunstroke—No. Rupture—No. Insanity—No. Fistula—No. Asthma—No. Dropsy—No. Colic—No. Fits—No. Gout—No. Diseases of the Urinary Organs or of any vital parts—No. Attacks of Dizziness—No. Fainting Spells or attacks of unconsciousness—No.

If you have ever had any of the foregoing diseases, state which, and in each case, how long since. Fever and ague, 19 years ago.

(10) Have you now or have you ever had any other illness, local or constitutional disease, or any serious personal injury? If so, in each case, state what and how long since. No.

Have you lost any time by sickness during the last three years? If so, how much? No.

Has any surgical operation been performed upon you? (Give particulars.) No.

(11) Have you been vaccinated within 7 years? No.

(12) Do you now possess a sound constitution and good health? Yes.

(13) Is your father living? No. Age———— State of health————

Is your mother living? No. Age———— State of health————

Is your father dead? Yes. Age at death. 52.

Cause of death—Accident.

Is your mother dead? Yes. Age at death—About 30 years.

Cause of death—Childbirth.

(14) How many brothers have you had? None. Ages and condition of health of living brothers——

How many sisters have you had? None. Ages and condition of health of living sisters———

Ages at death and the cause of death of deceased brothers. None.

Ages at death and the cause of death of deceased sisters? None.

(15) Are your grandparents living? (Answer below.)
Father's father—No. Age—Father's mother—No. Age—Mother's father—No. Age—Mother's mother—No. Age—
Are your grandparents dead? (Answer below.)
Father's father—Age at death—Cause of death—
Father's mother—Age at death—Cause of death—
Mother's father—Age at death—Cause of death—
Mother's mother — Age at death — Cause of death—
I know nothing of my grandparents; have heard that they all lived to be old.

(16) Have either of your parents, brothers or sisters, ever had insanity, consumption, chronic cough, or any scrofulous, constitutional or hereditary disease? No.

(17) Are your habits of life correct and temperate as to beer, wine or other spirits? Yes.
Have they been so through life? Yes.
How many times each day do you drink spirituous liquors? None.
How many times each day do you drink malt liquors? Not once a day.
Do you use opium or other narcotics? No.

(18) For how many attacks of sickness within the last three years have you been attended by a physician, or have consulted one, and for what diseases? None.
Give date and duration of each attack— ————
Have you fully recovered therefrom?————
The following are the names and addresses of

every physician consulted in the last three years. Name them.

(19) Name and residence of your usual medical advisor. Dr. Geo. Pitzer, St. Louis, Mo.

(20) Have any facts regarding your past health or present condition been omitted in the foregoing answers? No.

(21) I have verified each of the foregoing answers, adopt them as my own, whether written by me or not, and declare and warrant that they are full, complete and literally true answers to the questions against which they are written; and I agree that the exact literal truth of each shall be a condition precedent to any binding contract issued upon the faith of the foregoing answers; I also agree that proof of the fact that the agent taking this application has knowledge of facts contrary to any of the foregoing answers, shall not make valid a certificate of membership issued on the faith of such answers.

Applicant's signature—Frank Barber.

Applicant to sign here as well as below.

I do hereby agree that the foregoing answers and statements, together with the preceding declaration, warranty and agreements, shall form the basis of the contract between the undersigned and the Hartford Life and Annuity Insurance Company, and are offered to said Company by me as a consideration of the contract applied for, and are hereby made a part of all Certificates that may be issued on this Application;

and if there has been any concealment, misrepresentation, or false statement, or statement not true, made herein, and if I or my representatives shall omit or neglect to make any payment as required, in respect of amount, place, and time of payment, by the condition of such certificates, then the certificates to be issued hereon shall be null and void, and all money paid thereon shall be forfeited to said Company. And it is further agreed that the membership hereby applied for shall be subject only to the conditions and agreements contained in the certificates of such membership to be issued hereon. And it is further agreed that the Company shall not be responsible under said contract after my health shall be impaired by narcotics, alcoholic or other stimulants; and that if I shall die by self-destruction—whether sane or insane—the full measure of the Company's liability under said contracts shall be the amount of the cash payments made thereon, unless positive proof of insanity be furnished the Company.

At St. Louis, Mo., this 23d day of August, 1893.

I have read the instruction as to payments on lower margin and on page 1.

Applicant's signature—Frank Barber. (L. S.)

Witness to both signatures on this column—Dr. Meridan.

Signatures with "his × mark" must not be witnessed by Agent or Examiner.

Admission Fees of $4.00 for $500, $8.00 for $1,000, $10.00 for $1,500, $12.00 for $2,000, $13.50 for $2,500, $15.00 for $3,000, $18.00 for $4,000, and at the rate of $4.00 per $1,000 for $5,000 or more, (no rebate whatever from these fees being permitted), are authorized to be paid only upon delivery of certificate to member.

All other payments are to be made by member directly to the office of the company, at Hartford, Conn., and not to any general, special, state, district or local agent, nor to any one who does not first tender therefor a receipt signed by the company's president or secretary. Register all letters containing currency or postal notes.

EXHIBIT B TO ANSWER.

Charles H. Dresser of the Town and County of Hartford and State of Connecticut; Wilbur H. Squire of the Town of Meriden, County of New Haven, State of Connecticut; Hugh J. Wiley of the Town of New Haven, County of New Haven, State of Connecticut; L. F. Perdue of the City of Terre Haute, State of Indiana; E. W. Amsden of the City of Ormond, State of Florida; R. H. Davison of the City of Ballston Spa, State of New York; H. McClary of the Town of Southington, County of Hartford, State of Connecticut; R. N. Stanley of Highland Park, County of Hartford, State of Connecticut; A. J. Bostwick of the Town of Sharon, County of Litchfield and State of Connecticut; Charles Donnelly of the City of Covington, State of Kentucky; Joseph Bradford of the City of Norwich, County of New London, State of Connecticut; Walter H. Adams of the City of Worcester, State of Massachusetts; Henry A. Weber of the City of Detroit, State of Michigan; W. J. M. Gordon of the City of Cincinnati, State of Ohio; W. C. VanLoon of said Cincinnati, State of Ohio; C. A. Roebuck of the Town of Williamstown, State of Massachusetts; O. S. Chapman of the City of Minneapolis, State of Minnesota; J. M. Bugg of the Town of Chipley, State of Georgia; Charles Ammen of the City of New Orleans, State of Louisiana; Adolph Schmidt of the City of Brooklyn, State of New York; A. B. Smith of the Town of Morristown, State of Vermont; William Booth of the Town of Clinton, State of Illinois; W. O. Oldham of the City of Springfield, State of Missouri; C. H. Robinson of the City of St. Paul, State of Minnesota; Peter Farley of the City of Rochester, State of New York; Herbert Myrick of the City of Springfield, State of Massachusetts; A. B. Stockwell of the Town of Windsor Locks, County of Hartford, State of Connecticut; W. L. Dodds of the City of Buffalo, State of New York; O. W. Kerner of the Town of Kernersville, State of North Carolina,

vs.

The Hartford Life Insurance Company of the Town of Hartford, State of Connecticut; the Security Company of the Town of Hartford, State of Connecticut; George E. Keeney of Somersville, Tolland County; Lewis Sperry of East Windsor Hill, Hartford County; Rienzi B. Parker of the Town of Hartford, County of Hartford; Lewis E. Gordon of Hartford, County of Hartford; James H. Knight of the Town of Hartford; Raymond G. Keeney of the Town of Hartford, County of Hartford; Andrew Gordon of the Town of Hazardville, County of Hartford, and Everett J. Lake of the Town and County of Hartford; all of the State of Connecticut.

New Haven County, Superior Court, March 23, 1910.

Judgment.

This action brought by the plaintiffs in their own behalf and for the benefit of other creditors and certifi-

cate-holders in a similar situation as themselves against The Hartford Life Insurance Company, the Security Company, George E. Keeney, Lewis Sperry, Rienzi B. Parker, Charles H. Bacall, Arthur F. Eggleston, Lewis E. Gordon, James H. Knight, Raymond G. Keeney and Andrew Gordon, by complaint dated October 19, 1906, alleging that, prior to 1880, there had been devised a plan or form of assessment life insurance known as the "Safety Fund" plan, and that under said plan persons insuring therein were to pay in addition to admission fees, medical examination fees and other expense dues, payments of $10 on each $1,000 of insurance to make up a Safety Fund; that said Safety Fund was to be deposited with the Security Company, defendant, as trustee, and as often as said fund reached an amount sufficient to purchase $1,000, par value, of United States bonds, said trustee was to make investments of said fund therein; and that when the purposes and objects of said Safety Fund in the hands of said trustee had been fulfilled in accordance with the terms of the plan as set forth, said Safety Fund was to belong absolutely to the certificate-holders, and that said Hartford Life Insurance Company was to have no interest therein except in its application for the benefit of its certificate-holders in accordance with the terms of the plan; that in the year 1880 the defendant, The Hartford Life Insurance Company, adopted said plan of insurance and announced to the public and to prospective certificate-holders through its officers, managers and agents that it would do business thereunder, and, for the purpose of inducing prospective certificate-holders to take out certificates, published and caused to be published, and issued various circulars and other writings and literature descriptive of said plan of in-

surance; that the plaintiffs relied upon the representations and statements contained in said circulars and literature in taking out their certificates; that said company in the year 1899 for fraudulent purposes wrongfully ceased issuing certificates under said plan or form of insurance, and after said date, and after said Safety Fund had reached the sum of one million dollars, said Insurance Company asserted the right and intention to levy upon the certificate-holders for mortuary dues and assessments and for expense dues, without limit as to number or amount, and to levy and demand such dues and assessments after the outstanding insurance in said Safety Fund Department should be reduced to below one million dollars, and that said Safety Fund did not belong to the certificate-holders but belonged to said Insurance Company, and that said Insurance Company continues to make said claim; and alleging fraudulent diversions of moneys by the defendant, The Hartford Life Insurance Company, and the individual defendants from the funds and property of the Assessment Department of said Insurance Company, and illegal, excessive and unnecessary collections, and fees and assessments from the certificate-holders in said department, and mismanagement of the Safety Fund by the defendants by reason of which large losses had resulted to the Safety Fund in the hands of the trustee, as appears fully in said complaint, and claiming for relief, first, that the true amount of said Safety Fund be ascertained and declared and adjudicated to be the property of the Safety Fund certificate-holders, and that The Hartford Life Insurance Company has no property therein, and that it be declared and adjudicated that such is the true meaning of said certificates of insurance, or that said certificates be reformed so as to

convey said meaning; and praying also for a receiver, an accounting, a forfeiture of the moneys and benefits received by the defendant, The Hartford Life Insurance Company, from its certificate-holders, an injunction against The Hartford Life Insurance Company from making its claims in respect to the Safety Fund, damages in the amount of one million dollars, and for such other and further relief as in equity might pertain, came to this court on the first Tuesday of November, 1906, when all the parties appeared; thence by pleadings as on file to September 16, 1908, when the issues between the plaintiffs and the defendants, The Hartford Life Insurance Company and the individual defendants, were closed by the plaintiff's reply to the answer of The Hartford Life Insurance Company filed on said date; thence said cause came by continuance and by pleadings as on file to January 21, 1909, when the defendant, The Hartford Life Insurance Company, moved the Court for an order that the issue or issues formed by paragraph 21 of the answer of The Hartford Life Insurance Company to paragraph 29 of the plaintiffs' complaint and paragraph 10 of the plaintiffs' reply thereto be heard and determined before any other issue in said cause was tried; thence to January 28, 1909, when the Court after fully hearing the parties by counsel, granted said motion and ordered that the issue or issues made by paragraph 21 of the answer of the defendant, The Hartford Life Insurance Company, to paragraph 29 of the plaintiffs' complaint and paragraph 10 of the plaintiffs' reply thereto be heard and determined before any other issue in said cause was tried; thence said cause was continued to May 27, 1909, when all the parties except the Security Company, de-

fendant, appeared and proceeded to the trial of the last named issue.

The Court having heard the parties with their witnesses on the last named issue finds the same in favor of the plaintiffs.

Whereupon it is adjudged and decreed that whenever the amount of outstanding insurance in the assessment or Safety Fund Department of The Hartford Life Insurance Company shall be reduced by death, lapse or other causes, to the amount of one million dollars, the Safety Fund in the hands of the trustee is to be distributed among such of the plaintiffs named in the complaint herein as shall have survived said period, and such other certificate-holders in the Men's Division of the said department of said Insurance Company whose certificates are in force at that time, in the proportion that the face value of their respective certificates bears to the total amount of the outstanding insurance in said division of said Safety Fund Department; provided, however, that none of the contingencies or situations provided for in said contract Exhibit "B" for the distribution of said Safety Fund shall have arisen before that time, but such provisions in said Exhibit "B" shall remain in full force and effect unimpaired by this decree. And as the time when, in the ordinary course of events, the amount of outstanding certificates will be reduced to one million dollars is so remote, and that it will ever occur is so uncertain, no other relief under the general prayer should be granted at this time on this issue.

SHUMWAY, *J.*

EXHIBIT C TO ANSWER.

Charles H. Dresser of Hartford, Connecticut;
Wilbur H. Squire of Meriden, Connecticut;
Hugh J. Wiley of New Haven, Connecticut;
F. L. Perdue of Terre Haute, Indiana;
E. W. Amsden of Ormond, Florida;
R. H. Davidson of Ballston Spa, New York;
H. McClary of Southington, Connecticut;
R. N. Stanley of Highland Park, Connecticut;
A. J. Bostwick of Sharon, Connecticut;
Charles Donnelly of Covington, Kentucky;
Joseph Bradford of Norwich, Connecticut;
William H. Adams of Worcester, Massachusetts;
Henry A. Weber of Detroit, Michigan;
W. J. M. Gordon of Cincinnati, Ohio;
W. C. VanLoon of Cincinnati, Ohio;
C. A. Roebuck of Williamstown, Massachusetts;
O. S. Chapman of Minneapolis, Minn.;
J. M. Bugg of Chipley, Georgia;
Charles Ammen of New Orleans, Louisiana;
Adolph Schmidt of Brooklyn, New York;
A. B. Smith of Morristown, Vermont;
William Booth of Clinton, Illinois;
W. A. Oldham of Springfield, Missouri;
C. H. Robinson of St. Paul, Minnesota;
Porter Farley of Rochester, New York;
Herbert Myrich of Springfield, Massachusetts;
A. B. Stockwell of Windsor Locks, Connecticut;
W. L. Dodds of Buffalo, New York;
O. W. Kerner of Kernersville, North Carolina;

vs.

The Hartford Life Insurance Company of Hartford, Connecticut;
Security Company of Hartford, Connecticut;
George E. Keeney of Somersville, Connecticut;
Lewis Sperry of East Windsor Hill, Connecticut;
Rienzi B. Parker of Hartford, Connecticut;
Lewis E. Gordon of Hartford, Connecticut;
Everett J. Lake of Hartford, Connecticut;
James H. Knight of Hartford, Connecticut;
Raymond G. Keeney of Hartford, Connecticut;
and Andrew Gordon of Hazardville, Connecticut.

New Haven County Superior Court, March 23, 1910.

Judgment.

This action was brought by the plaintiffs in their own behalf and for the benefit of other creditors and certificate-holders in similar situation as themselves against the defendants named in the complaint, claiming that prior to 1880 there had been invented a plan of assessment life insurance which was designated as the Safety Fund Plan, and published and generally

known under that name, the principal features of which plan are described as follows: Each person applying for insurance under the plan was to pay an admission fee of $8 for $1,000; $12 for $2,000; $15 for $3,000; $18 for $4,000; $20 for $5,000, and $40 for $10,000, and a medical examination fee estimated at $3, which medical examination fee was to be paid to the physician; also to pay annually, for the sole purpose of paying the expense of said insurance on said Safety Fund Plan, $3 for each $1,000 of insurance, also to pay as mortuary payments or assessments to meet death losses an amount graduated according to the policy-holder's age, when the assessment was made, the amount of his policy, and the total amount of insurance or indemnity in force with the company. Furthermore, each member was to pay $10 on each $1,000 of his insurance to make up a "Safety Fund". This Safety Fund was to be deposited with the defendant, The Security Company of Hartford, Connecticut, as trustee. As often as the receipts for said fund amounted to a sufficient sum to purchase $1,000 par value of United States bonds, such trustee was to make investments of such funds therein and register the same in its name as trustee of the Safety Fund of said insurance company. The earnings of this Safety Fund after it reached $300,000, and all contributions to said fund after it reached $1,000,000 in United States bonds, par value, were to be divided up among the outstanding certificate-holders whose certificates had been in force five years, in proportion to the face amount of their certificates. In case of failure of any certificate-holder to make payments in accordance with his agreement, his interest in said Safety Fund and all his claims were to cease; and when the face amount of out-

standing certificates was less than $1,000,000 it should be divided among the outstanding certificate-holders in proportion to the face amount of their certificates. And further said sum was to belong absolutely to the certificate-holders and the company was to have no interest whatsoever therein, except in its application for the benefit of the certificate-holders in accordance with the terms of said plan. And claimed that at some time in the year 1880 the defendant, the Hartford Life Insurance Company, adopted said plan and issued certificates in accordance with the terms thereof; and that the plaintiffs and a large number of others held certificates issued in accordance therewith and similar to Exhibit "B" annexed to said complaint; and claimed that in pursuance of certain purposes for its own benefit said insurance company offered various inducements to induce the certificate-holders in its Safety Fund department to surrender their certificates in said department and to take out in place thereof policies in the stock department of said company, and that said insurance company had diverted from the moneys and property of said Safety Fund department large sums of money to use and benefit of itself and the managers and stockholders of its stock department, and made other allegations, as will appear from said complaint, and asked relief as therein set forth. Said action came to this court on the first Tuesday of November, A. D. 1906, and thence by continuance to the first Tuesday of January, 1907, when and where the parties appeared and were at issue on demurrers as on file, and the Court on the 11th day of October, 1907, sustained said demurrers and adjudged that the complaint was insufficient, and that the defendants recover the costs, and thereupon the plaintiffs appealed from said judgment to the

Supreme Court of Errors to be held at Bridgeport within and for the Third Judicial District on the first Tuesday of October, A. D. 1907, and said Court having heard said case rendered judgment on June 9, 1908, finding error and overruling said demurrers in part and sustaining said demurrers in part, and remanding said cause to this court for further proceedings as will appear in said judgment; and thereupon the defendant, the Security Company, filed its answer as on file, and the other defendants filed their answers as on file, and the case was heard on the demurrer of the plaintiffs to the answer of the Security Company, and the Court on the 17th day of December, 1908, rendered its decision sustaining the demurrers to the first, second and third defenses of said answer, and overruling the demurrer to the fourth defense; and the case thereupon came by regular continuances to this court on the ? day of January, 1909, when the Court made an order that the issues raised by the 21st paragraph of the answer of the Insurance Company to the 29th paragraph of the complaint, and paragraph 10 of the plaintiffs' reply to said answer, be heard and determined before any other issues were tried, and thence said case came by regular continuance to the 27th day of May, A. D. 1909, when the parties were at issue as on file, and thereupon a hearing was had on said issues, but the said The Security Company did not appear, and the Court (Judge Shumway presiding) after said hearing filed a memorandum of decision as on file under date of July 21, 1909, and on March 23, 1910, formally entered judgment as on file to conform to the date of this judgment; and thence said cause came to this court on the 10th day of November, A. D. 1909, when all the parties duly appeared and were heard on

the other issues in said case not disposed of by the aforesaid judgment, and the Court having heard the parties finds certain issues in favor of the plaintiffs and certain others in favor of the respective defendants, as herein set forth, and at the request of the plaintiffs specially sets forth the facts upon which the judgment is founded as follows:

The Safety Fund plan of insurance under which the certificates in this case were issued, and with which they comply in terms, is substantially as follows: Each person applying for insurance under the plan was to pay an admission fee of $8 for $1,000; $12 for $2,000; $15 for $3,000; $18 for $4,000; $20 for $5,000 and $40 for $10,000, and a medical examination fee estimated at $3, which medical examination fee was to be paid to the physician; also to pay annually expense dues of three dollars for each $1,000 of insurance, also to pay as mortuary payments or assessments to meet death losses an amount graduated according to the policyholder's age, when the assessment was made, the amount of his policy, and the total amount of insurance or indemnity in force with the company. Furthermore, each member was to pay $10 on each $1,000 of his insurance to make up a Safety Fund. This Safety Fund was to be collected by the defendant, The Hartford Life Insurance Company, and by it deposited with the defendant, The Security Company of Hartford, Connecticut, as trustee. As often as the receipts for said fund amounted to a sufficient sum to purchase $1,000 par value of United States bonds, such trustee was to make investments of such funds therein and register the same in its name as trustee of the Safety Fund of said Insurance Company until said fund so invested would amount to one million dollars par value

of United States bonds. The earnings of this Safety Fund after it reached $300,000 and all contributions to said fund after it reached $1,000,000 in United States bonds, par value, were to be paid over by said Security Company to said Insurance Company and by it be divided up among the outstanding certificate-holders who had contributed five years prior to the date of any such division their stipulated proportion or payments to said fund, in proportion to the face value of their certificates.

In case of failure of any certificate-holders to make payment in accordance with his agreement, his interest in said Safety Fund and all his claims thereon ceased. When the face amount of outstanding certificates becomes reduced by death, lapse or other cause to the amount of one million dollars, the disposition of said Safety Fund in such case was adjudicated by this court in the judgment referred to above rendered by this court, Judge Shumway presiding, as appears therein.

The Security Company and the Hartford Life Insurance Company on December 31, 1879, and before the Hartford Life Insurance Company commenced the issue of such certificates, executed an agreement, a copy of which is incorporated in each certificate and is found incorporated in Exhibit "B" in this case, under which agreement the Security Company assumed the management of the Safety Fund in accordance with the terms of the contract contained in the certificate, and with the plan as thus set forth, and continued the management of such business in accordance with the terms of the agreement down to a period in 1890.

At the solicitation and by the procurement of the Hartford Life Insurance Company, the Legislature of

1889 passed a private act, approved April 10, 1889, which is as follows:

> "Resolved by this Assembly: That the Security Company, a corporation located in Hartford, be and it is hereby authorized to invest the funds known as the Safety Fund, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between said companies dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders of certificates of membership in said Hartford Life and Annuity Insurance Company, in such other securities, in addition to United States bonds, as the life insurance companies of this State are by law authorized to invest in, instead of being compelled to invest all said funds in United States bonds as specified in said contract; provided, such investments of said funds in other securities than United States bonds shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided further, that nothing in this resolution shall be so construed as in any way to vary, alter or change the purposes, conditions or stipulations of such trust as set forth in said contract, except as to the kind of securities in which the same may be invested."

Thereafter the Security Company did not comply with the provisions of the contract executed in December, 1879, in regard to investments. It never accumulated a fund of one million dollars, par value, of United States bonds, although it did accumulate a fund which in June, 1894, amounted to one million dollars value of securities. Relying in good faith on the

provisions of the Act of 1889 above quoted, in the year 1890 it sold United States bonds amounting to $501,000 par value then held by it under the terms of said trust agreement and received therefor $97,366.85 over and above the par thereof, which United States bonds had been purchased at a premium of $115,689.50, making the whole cost of the said bonds $616,689.50. Said Security Company thereupon in accordance with the provisions of said Act of 1889, but in violation of said contract with said certificate-holders made in 1879 as aforesaid, invested the proceeds of such sale, together with other Safety Fund payments thereafter received, in such other securities as are required for the investment of insurance companies under the laws of this State, but not in United States bonds as provided in said agreement. The amount of money so received and invested, together with the premiums paid, including the premiums paid on the United States bonds so converted, amounted to much more than one million dollars, to-wit, upwards of $1,090,000.

Said Act of 1889 above stated has been ruled by this court on demurrer to the answer of the defendant, the Security Company, to be unconstitutional as impairing the obligation of the contract embodied in the trust agreement with the certificate-holders.

As a result of such investments in other securities losses have been incurred, and the actual value of said fund now remaining in the hands of the Security Company on account of said Safety Fund is somewhat less than one million dollars. Many of said securities are not such as are authorized by the law of this State concerning the investments by trustees, as appears by the disclosure of the Security Company on file in this case,

and some of these securities have today no market value and are paying no income.

This Court, however, finds that the illegal investments made by the Security Company under the provisions of the private Act of the General Assembly of 1889 were not made to further any purpose of its own, but were made in reliance upon said act which was passed in the supposed interest of the beneficiaries, or certificate-holders; that such illegality differs from illegality knowingly or negligently indulged in; that the loss which has fallen upon the Security Company from such illegal investments of the Safety Fund has its source in misfortune and not in culpability.

By reason of the change so made in the investments of said Safety Fund, there was received as income by said Security Company down to the commencement of this action $315,828.41 in excess of what the income would have been had said United States bonds not been sold and all investments of said Safety Fund had been made by the trustee only in United States bonds.

Practically the only issue of United States bonds in the market for sale from January, 1890, to March, 1895, were the four per cent bonds maturing April 1, 1907. The market price of said bonds in January, 1890, was 126½ of par, and the price thereof gradually fell from time to time until March, 1895, when a new issue was made of four per cent bonds to mature in 1925. The market price of said four per cent bonds of 1907 then ranged from 111 to 112¾ of par, and the market price of said four per cent bonds of 1925 ranged from 119⅛ to 120½. The Security Company was not required to establish a sinking fund. The agreement makes no reference to such a fund, although United States bonds

were then (December, 1879) at a small premium of about three per cent.

The situation presented by the beneficiaries was not analogous to that of a life tenant and remainderman, but was more nearly like a beneficiary entitled to the interest, and eventually to the principal of a fund. It was as important for the early certificate-holders to receive all the income as that a sinking fund should be established to lighten the possible burden that might fall on certificate-holders at the maturity of the bonds, if the $10 payments then received were applied to the purchase of bonds to restore the Safety Fund to $1,000,000, par value, of United States bonds. A continuation of the business was then contemplated with a constant flow of $10 payments into the Security Company from new certificate-holders. By having no sinking fund, the total net income went to the beneficiaries instead of a part of it into an investment to await the maturity of the bonds, thus in effect the beneficiaries became the holders of a sinking fund, since if at maturity more than the $1,000,000 was necessary to procure $1,000,000 par value, of United States bonds, it would come from them in diminished returns from the $10 payments, or in case (as happened) the business was not continued, then equitably from diminished payments of income until the fund was restored. As a matter of fact, at the maturity of the bonds of 1907, United States bonds paying two per cent could have been purchased nearly at par.

Under the investment policy pursued after 1889, a much larger sum arising from unused $10 payments was returned, and much earlier, to the use of certificate-holders, and also a much larger amount of income

was so returned, than would have been returned if the investments had been made in United States bonds.

By the terms of said trust agreement above referred to, it appears that the Security Company agreed with the Hartford Life Insurance Company and with the certificate-holders, that "the necessary expenses connected with the management of said fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinafter mentioned bonds, together with the cost of the stationery and postage used in replying to requests for information of the condition of said fund, and the actual cost of any judicial action needed to determine the legal status of said fund. All other expenses to be included in and covered by such reasonable charges as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof."

On the date of the execution of said trust agreement, the Security Company, by its president and secretary, wrote a letter to the president of the Insurance Company, and the same day the Insurance Company, by its president and secretary, wrote a similar letter to the president of the Security Company, in both of which it was stated that it was agreed that the compensation referred to in said contract should be as follows: "The rate to be one per cent on all sums up to and not exceeding $200,000, but in no year to be less than $500.00; and from $200,000 to $400,000 to remain at $2,000 per annum; and on all amounts exceeding $400,000 to be one-half of one per cent per annum."

This was done before any certificate of membership had been issued by the Insurance Company and before any opportunity had been had to determine the amount

of time and labor involved in the execution of the trusteeship.

Thereafter, at the end of each six months, the Security Company computed its compensation under its interpretation of said agreement with the said Insurance Company, and submitted said compensation to said Insurance Company for its approval, and, if so approved, it withdrew said amount and took the same as its compensation as trustee for the preceding six months.

No complaint was ever made of this compensation by any certificate-holder down to the commencement of this suit, but it did not appear that the certificate-holders knew of the rate or amount of compensation which said trustee had received or was receiving.

The amount of income collected under said trust agreement by the Security Company was $970,175.83 down to September 18, 1908, and the Security Company, acting under its interpretation of the terms of said letter, received and credited to itself as compensation, with the consent of said Insurance Company, and deducted from said income, the amount of $116,741.16, being more than twelve per cent of the income, and then paid over to the Insurance Company for credit on the assessments of the certificate-holders in accordance with the terms of the contract, the balance of the income after deducting its compensation and other expenses, the latter amounting in all to over fifteen thousand dollars.

Since 1892 the stated compensation of the trustee has been calculated and received on amounts which in each year exceeded one million dollars.

The ordinary compensation of a trustee for holding and managing trusts consisting of personal property

is five per cent of the income. Under the contract the Security Company, down to March, 1899, in addition to taking care of and managing said Safety Fund, and turning over the income to the Hartford Life Insurance Company semi-annually, in pursuance of the contract, kept an account of the ten-dollar payments with the names and addresses of the certificate-holders from whom said ten-dollar-payments were received. Since January 1, 1891, the fair value of the services of the trustee does not exceed eight per cent of the gross income of the fund for each year, but its charges for such services have largely exceeded that amount. The amount of such excess, together with simple interest thereon calculated from the close of each year, when such charge was made, amounts to $40,046.36.

And this Court further finds that said Security Company was not obligated under the terms of said trust agreement with the Hartford Life Insurance Company and with the certificate-holders to maintain a sinking fund;

That the Act of the General Assembly of 1889, to which reference is made above, was passed without notice to, or the consent of, the holders of certificates of insurance issued by said Insurance Company, and was unconstitutional and void; that if the Safety Fund is now invested in United States bonds an annual income of less than two per cent will be received on the amount so invested, and that if said fund is now invested in securities (other than United States bonds) in which the law of this State authorizes trustees to invest trust funds, an approximate annual income of four per cent will be received on the amount invested, and that it is within the power of this court of equity to protect the said certificate-holders from the great

and unnecessary loss and waste of approximately twenty thousand dollars per year, which loss and waste will result if said Safety Fund is now invested in United States bonds.

It was claimed by the plaintiffs that the defendants were levying assessments unnecessary in amount and number for their own wrongful purposes. The Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate above set forth, quarterly, and the proceeds of such assessments when received by said Insurance Company were paid into and credited to the mortuary fund described in the contract of insurance. The Hartford Life Insurance Company did not levy assessments unnecessary in amount or number. It appeared, however, that the allowance made for discontinuance of membership, although made in good faith, often exceeded the actual amount necessary to cover the deficiency in payments arising from such discontinuances, and from that source margins of excess of payment arose from time to time consisting of the difference between the aggregate amount actually received by said Insurance Company from such quarterly assessment and the amount needed to pay the losses for the corresponding quarterly period. It also appeared that although the Company in practice levied assessments to cover the full amount of the face value of the certificates for each death during the previous quarter, they deducted an actual payment from the face of such certificates a certain proportion of the assessment which would have been due from the certificate-holder had he survived the quarter, which sum is proportioned to the portion of such quarter which had elapsed at the time of the death of such certificate-holder, and there was, there-

fore, a margin arising from this circumstance between the amount of the losses paid and the amount of the losses assessed for. These margins accumulated from time to time in the hands of the Hartford Life Insurance Company in its mortuary fund, have always been and are now in constant use in the prompt payment of losses in advance of the receipt of the moneys to pay the same from the regular assessments, by which receipts the said fund is constantly reimbursed. Said accumulation of margins, although in constant use, are capable of exact determination in amount, and now amount to many thousands of dollars.

The plaintiffs claimed it was improper and wrongful to accumulate these margins and to carry this balance in said mortuary fund, and claimed that said balance of margins should be distributed among the outstanding certificate-holders, but it is held that it is proper and reasonable that the Company should hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the Company should hold more than the amount of one average quarterly assessment for the previous year.

Said fund belongs to the certificate-holders and is held in trust for them, and the Hartford Life Insurance Company has the right to hold the same, to the extent above stated, in trust for said certificate-holders and for application to the settlement of death claims, and said fund should be ultimately distributed in the settlement of death claims and as hereinafter provided, before said certificates in accordance with their provisions are extinguished and the Safety Fund distributed in accord with the judgment of this Court, Judge Shumway presiding, above referred to.

It is provided in the certificates that they are pay-

able solely from the mortuary fund. It is also provided by the certificates and by the trust agreement hereinbefore referred to that on the distribution of the Safety Fund among the certificate-holders all liability on the certificates shall thereupon cease and determine.

It was claimed by the plaintiffs that the expense dues received by the Hartford Life Insurance Company could be levied only for the purpose of paying the expenses of the Safety Fund Department of the Hartford Life Insurance Company, and that as the Company ceased to issue new certificates and transact new business at a period not later than 1899, the Hartford Life Insurance Company was not entitled to said expense dues after that period, and that the plaintiffs were entitled to an account for the amount of such expense dues received after the payment of the expenses actually incurred by the Hartford Life Insurance Company in connection with the business. It has been ruled by the Supreme Court of this State, and is so held by this Court, that said three-dollar expense dues did not become a part of the funds of the Safety Fund Department, but that they belong to the Insurance Company without accountability to the certificate-holders, and that said Company is entitled to collect the same so long as there is any outstanding certificate of insurance. The plaintiffs made no claim at the time of the trial for any such account of said expense dues, and made no claim for relief on account of the collection or receipt of the same, and the plaintiffs are not entitled to any such relief.

It was also claimed that the Insurance Company had from time to time diverted moneys and property of the Safety Fund Department from such Safety Fund Department to the Stock Department without right.

The plaintiffs after submitting evidence on the trial in support of said claim withdrew their demand therefor and admitted that the circumstances appearing to indicate such diversion arose from the difference in the method of keeping accounts appearing by their reports to the Insurance Department, and it is found that the Insurance Company has not wrongfully diverted such sums from the Safety Fund Department to the uses of the Stock Department.

It was claimed by the plaintiffs that the defendants other than the corporations, as officers and agents of said Insurance Company, took their offices with knowledge of the various wrongful and fraudulent acts recited in the complaint, and had accepted the benefits of said fraudulent transactions. But it is held that said defendants, namely, George E. Keeney, Lewis Sperry, Rienzi B. Parker, Louis E. Gordon, Everett J. Lake, James H. Knight, Raymond G. Keeney, Andrew Gordon, Arthur F. Eggleston and Charles H. Bacall, became connected with said defendant Insurance Company and took their positions in said Company at a date subsequent to the acts complained of and recited in said complaint, and have not participated in and are not guilty of any fraudulent acts or transactions in connection with the management of the Safety Fund Department of said Insurance Company.

Plaintiffs are not entitled to an account, a receiver, damages, or other relief except as herein granted.

Defendants Charles H. Bacall and Arthur F. Eggleston died after the commencement of this action and before any judgment was rendered therein.

Whereupon it is adjudged and decreed that said mortuary fund of the Men's Division arising from the excess of the amount received for quarterly assess-

ments over the amount necessary for the payment of losses for said quarter, as above described, or from any other source, together with all income or interest thereon, belongs to the certificate-holders in the Men's Division of the Safety Fund Department, and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department.

Further, that in the future any excess in said fund above the average of the four preceding quarterly assessments in said Men's Division of the Safety Fund Department of said Company shall be distributed to the certificate-holders in diminution of assessments by crediting and applying such excess on account of the next succeeding assessment.

Also, that when the amount of outstanding certificates of insurance in the Men's Division of the Safety Fund Department falls to the face amount of one million dollars and the Safety Fund is distributed among the holders of said certificates, the balance, if any, of said mortuary fund remaining in the hands of the Hartford Life Insurance Company shall be distributed *pro rata* among the certificate-holders whose certificates are outstanding at that time.

That said Security Company as such trustee within eighteen months from and after July 1, 1910, shall sell and dispose of all present securities and investments of said Safety Fund, other than those which it shall be willing to hold as securities authorized by law, for trust investments, and shall invest the proceeds of such sales in such securities (other than United States bonds) in which trustees are allowed to invest under the law of the State of Connecticut.

That said Security Company, as such trustee, may and shall continue to hold as a part of said Safety Fund any and all securities (other than United States bonds) in which said fund is now invested, and which constitute investments in which trustees are authorized by law to invest, and which said trustee shall decide to retain as a part of said Safety Fund.

That all of said trust securities which shall be retained by said Security Company in said Safety Fund shall be valued and so held at their market value at the date of this judgment, and that all securities hereafter purchased by said trustee as a part of the investments of said Safety Fund shall be taken and held as a part of said Safety Fund at their cost price.

That as to all bonds or obligations payable at a fixed time in the future which shall be so retained or hereafter purchased by said trustee as a part of said Safety Fund, the Security Company shall create and carry a sinking fund out of the income of said respective securities for the amortization of the premiums or bonuses above par, which there may be in the valuation or cost of said securities.

In case the present market value of all the securities which are now held by said trustee and which it shall retain as a part of said Safety Fund, together with the cost price of all securities purchased by said trustee under the provisions of this judgment, shall not equal the sum of one million dollars on or before January 1, 1912, then said Security Company, out of its own funds, shall furnish and pay into the principal account of said Safety Fund a sum sufficient to make said fund up to one million of dollars, which sum so paid in (if any) shall be invested by said trustee in securities in

which trustees shall then be authorized by the law of this State to invest.

That said trustee shall have the right and power to sell and transfer from time to time any securities which it may hold in said fund, and shall invest the proceeds of said sales in other securities in which said trustees shall be authorized to invest.

That the Security Company credit to the income account of the Men's Division of the Safety Fund Department the sum of forty thousand and forty-six dollars and thirty-six cents ($40,046.36), being the excess of the amount hitherto received by it over the compensation which this Court has allowed, with interest thereon as above described.

That the Security Company hold said sum of forty thousand, forty-six and 36/100 dollars ($40,046.36) as a separate fund until the conversion of the securities as provided above, and if under this judgment the Security Company is compelled to make up from its own funds any of the principal of the Safety Fund, then the Security Company is authorized and directed to apply such sum of $40,046.36, with the accumulated interest realized thereon from the date thereof, in whole or in part to reimburse said Security Company, so far as may be, for the sum so made up by it. If after the conversion of the securities and the re-establishment of the Safety Fund as provided above, the whole or any portion of said $40,046.36 remains unapplied for the purpose of so reimbursing said Security Company, the Security Company is directed to re-transfer it to the regular income account of the Safety Fund.

That when the conversion and purchase of securities is completed as hereinbefore authorized, the Security Company shall file in this court a report or account of

its proceedings in detail, sworn to by one of its executive officers, and which shall show an investment of one million dollars as the principal of said Safety Fund, and the payment of any excess under this judgment, to the income account of said Safety Fund.

That the said Security Company from this time henceforth shall be entitled to charge and receive for its services as such trustee a sum equal to eight per cent of the gross income received from said investments, to be paid in semi-annual payments of four per cent each.

In addition to said eight per cent of the gross income as compensation, and in addition to such expenses as are authorized by said trust agreement of December 31, 1879, said trustee shall be entitled to be reimbursed for all necessary legal expenses incurred in the protection and collection of any obligation which shall at any time be held under the authority of this judgment as a part of the principal of said Safety Fund.

It is further adjudged that this litigation is of such a character and the results of such value to all the present certificate-holders who as a class are interested in this litigation that an allowance should be made from the accounts of the safety fund in aid of the plaintiffs in the payment of the expenses, including the attorney's fees, involved in the conduct of this litigation.

Whereupon it is further adjudged that said Security Company pay to Henry Stoddard, Talcott H. Russell and John K. Beach, attorneys for the plaintiffs, on or before the expiration of ten days after the judgment in this case shall become final, the sum of twenty-five thousand dollars ($25,000), which sum shall be paid out of the principal of said Safety Fund now in its

hands, which shall be applied by the plaintiffs and their said counsel to aid in the settlement of the expenses and attorneys' fees of the plaintiffs in this action, for which the said plaintiffs shall give to said Security Company a receipt certifying to said payment in accordance with this judgment, which certificate shall be carried by said trustee as a part of said principal of the Safety Fund, for reimbursement as hereinafter provided, and said payment shall not constitute a deficiency *pro tempo* in the principal of said fund.

It is also adjudged that said trustee shall semi-annually pay out of and from the income received from the investments of the principal of said fund, the sum of one thousand dollars, and shall pay the same into the principal fund, and shall endorse said payment upon said certificate originally given under this judgment for the payment of said sum of twenty-five thousand dollars ($25,000), which payment, when so endorsed, shall constitute a repayment *pro tanto* of said sum, and said trustee shall continue to make said semi-annual repayments until said sum of twenty-five thousand dollars ($25,000) has been so repaid, and said Security Company shall be under no other obligation or liability to repay said sum of twenty-five thousand dollars ($25,000) or any part thereof.

It is also adjudged that said Security Company shall conform to all of the agreements contained in said trust contract of December 31, 1879, other than the one with reference to the investments of said trust funds, as to which this judgment shall control; and that the defendant, the Hartford Life Insurance Company, keep said Security Company correctly informed of the names and addresses of the certificate-holders in

the Men's Division of the Safety Fund Department, and of the number and amount of such certificates in accordance with the terms of the Safety Fund contract, and furnish said Security Company such other information as may be required in accordance with the terms of said contract.

It is also adjudged that no costs shall be taxed by or in favor of any party hereto.

CURTIS, *J.*

And thereafter, on January 2, 1913, plaintiff filed her reply to said answer which is as follows (omitting caption and signatures):

REPLY.

Comes now the plaintiff in the above-entitled cause and for reply to the defendant's amended answer, as amended, to the plaintiff's amended petition herein denies each and every allegation in said amended answer, as amended, contained and set forth.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

For further reply to the defendant's amended answer herein plaintiff states that the defendant on the 8th day of July, 1910, stated to the plaintiff and then contended that the policy of insurance sued upon herein lapsed and was forfeited for the failure of Frank Barber to pay an assessment known and designated as call No. 126, due March 1st, 1910, and was then canceled by the defendant for that reason and for no other reason; that the defendant did not then and there contend that said policy of insurance lapsed and was forfeited and was canceled by the defendant for the failure of Frank Barber to pay $1.50 quarterly dues or

any amount for taxes, and that thereby the defendant led the plaintiff to believe that for that reason and no other reason the defendant refused to pay plaintiff the amount of the policy sued upon herein; that at no time before the institution of this suit did the defendant contend or claim that the policy of insurance herein had lapsed and was forfeited for the non-payment of the sum of $1.50 or any other sum for quarterly dues, or any sum for taxes. That relying thereon the plaintiff thereafter instituted this suit against the defendant, and has gone to much trouble and great expense in taking depositions and preparing the same for trial, and that by reason of the said statements, contentions and acts and conduct of the defendant and things aforesaid, the plaintiff has been caused to go to much trouble and incur large expense in the institution and prosecution of this suit against the defendant, and that by reason thereof the defendant has waived any and all defenses pleaded by it herein wherein it claims that the policy of insurance sued upon herein had lapsed and was forfeited for the failure of Frank Barber to pay the sum of $1.50 or any other sum as quarterly dues or any sum as taxes and is now thereby estopped to make the defenses or assert that the policy of insurance sued upon herein was lapsed or forfeited for the failure of said Frank Barber to pay the sum of $1.50 quarterly dues or any other sum, or any sum as taxes, and cannot now claim that said policy was rendered void or was forfeited by reason of the same.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

For further reply the plaintiff says that the defendant's plea in its said amended answer wherein it challenges the constitutionality of section 7068, Revised

Statutes of Missouri of 1909, authorizing the imposition and recovery of damages and attorneys' fees for vexatious refusal to pay loss under a life insurance policy, and wherein it is alleged that said statute is unconstitutional and void because in violation of Section 10 of Article I of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and also in violation of Section 30 of Article II, and Section 10 of Article I, of the Constitution of Missouri, is not made in good faith, but for the purpose of depriving the Kansas City Court of Appeals of the State of Missouri of jurisdiction on an appeal in this case; and it is an attempt to raise an alleged federal question, which in truth and fact does not exist, because both the Supreme Court of Missouri and the Supreme Court of the United States have held said section and similar acts constitutional and have decided that they were not in violation of either the state or federal constitution, and said plea is made for the purpose of giving the Supreme Court of the State of Missouri, and the Supreme Court of the United States jurisdiction on appeal or on writ of error in this cause and to vexatiously delay and annoy the plaintiff; and if permitted will perpetrate a legal fraud against the jurisdiction of the Kansas City Court of Appeals and a legal fraud on the jurisdiction of the Supreme Court of Missouri and the Supreme Court of the United States.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

On the same day defendant filed its motion to strike out part of said reply, which is as follows (omitting caption and signatures):

MOTION TO STRIKE OUT PART OF REPLY.

Now comes the defendant and moves the Court to strike out all that portion of plaintiff's amended reply filed January 2, 1913, except the first page and the first fifteen lines of page 2 thereof, because it constitutes no defense and recites no fact whatever that constitutes any part of the cause of action sued on and is wholly redundant and surplusage.

Which the Court refused to pass upon at the time before the trial commenced; to which action the defendant at the time objected and excepted.

TRIAL.

On the 2nd day of January, 1913, during the October Term, 1912, said cause came on for hearing before the Hon. C. A. Calvird, Special Judge, and a jury, and said trial commenced; and said trial progressed on said day and the following, on which last mentioned date the jury returned its verdict in favor of the plaintiff and against the defendant in the sum of $2,976.00; to which action defendant at the time objected and excepted and filed its objection to the entry of judgment against it personally, which was overruled; to which defendant excepted.

MOTIONS FOR NEW TRIAL AND IN ARREST OF JUDGMENT.

And thereafter, on January 3rd, 1913, and within four days after the rendition of the said verdict, and at the same term during which said cause was tried, defendant filed its motions for a new trial and in arrest of judgment, which were on the same day, and dur-

ing the October Term, 1912, overruled; to which action defendant at the time objected and excepted.

APPEAL.

On said 3rd day of January, 1913, and during the October Term, 1912, defendant filed and presented to the Court its affidavit for appeal, in due statutory form, which being approved, an appeal was allowed defendant to the Supreme Court of Missouri, said affidavit being as follows:

AFFIDAVIT FOR APPEAL.

In the Circuit Court Within and for the County of Johnson, State of Missouri. October Term, 1912.

Rose Barber,
Plaintiff,
vs.
Hartford Life Insurance Company,
Defendant.
} No. 4619.

Now comes defendant and moves the Court to grant it an appeal from the judgment heretofore rendered in this cause to the Supreme Court of the State of Missouri for the reason that a constitutional question both of the Constitution of the State and the United States was fairly, honestly and sincerely raised both in the pleading and trial of said cause.

JONES, HOCKER, HAWES & ANGERT,
JAMES C. JONES, JR.,
GEORGE HAID,
J. W. SUDDATH & SON,
Attorneys for Defendant.

State of Missouri, } ss.
County of Johnson. }

J. C. Jones, Jr., being first duly sworn, upon his oath states that he is an attorney of record for the defendant in the above-entitled cause and acts in this matter as the agent of the defendant, and makes this affidavit for and on behalf of the defendant; and upon his oath states that the appeal prayed for to the Supreme Court of Missouri by the defendant is not made for vexation or delay, but because the defendant believes itself aggrieved by the decision of the Court, and because this affiant, as agent of the defendant, believes the defendant aggrieved by the decision of the Court herein.

And further affiant saith not.

JAS. C. JONES, JR.

Subscribed and sworn to before me this 3rd day of January, 1913.

(SEAL)

W. H. HENSHAW,
By J. M. CALDWELL, *D. C.*,
Circuit Clerk Within and for Johnson County, Missouri.

On the same day, January 3rd, 1913, the defendant was granted leave to May 1st, 1913, to file its bill of exceptions, which said time for filing its bill of exceptions was again on April 28, 1913, by stipulation, extended until September 1st, 1913.

On August 16, 1913, within the time theretofore allowed, defendant presented to the Court its bill of exceptions, which was by the Court signed, sealed, allowed and ordered filed, and said bill of exceptions was on the 16th day of August, 1913, duly filed by the clerk and made a part of the record in this case.

BILL OF EXCEPTIONS.

Appearances:

Morrow & Kelley, Nick M. Bradley, attorneys for plaintiff.

James C. Jones & Son, J. W. Suddath & Son, attorneys for defendant.

Be It Remembered, That on this Thursday, the 2nd day of January, 1913, the same being during the October, 1912, Term of the Circuit Court within and for Johnson County, Missouri, this cause coming on for trial before Hon. C. A. Calvird, Special Judge of said court, with a jury, the following proceedings were had herein:

Defendant amends Amended Answer to Amended Petition as follows: By striking out the ten lines heretofore inserted after the word "administered", on page 8 of said answer, and inserting the following: "That said action was brought by one Charles A. Dresser, a member of said safety fund department and holding a certificate of membership similar to that sued on by the plaintiff, which said action was brought by said Charles A. Dresser on his own behalf, as well as on behalf of others similarly situated, including this plaintiff, to which action this plaintiff was thereby made a party and whose rights were therein fully adjudicated and the decisions in which case are *res adjudicata* as to this plaintiff's rights in said safety fund and mortuary fund."

And by inserting after the word "fund" in the seventh line on page 8 the following: "That said action was brought by Charles A. Dresser *et al.*, members of the safety fund department and holding certificates of

membership similar to that sued on by the plaintiff in this case, which said action was brought by said Charles A. Dresser and other policy holders on their own behalf as well as on behalf of others similarly situated, against this defendant in its capacity as trustee of the mortuary fund and against the Security Company as trustee of the safety fund, wherein all the rights of the said Frank Barber, as well as all other certificate holders, in and to said funds and the administration thereof became and were fully adjudicated, and said decisions in said case became and are *res adjudicata* as to the facts found by the courts in said case and the judgments entered in pursuance thereof."

After reading of petition to the jury defendant files motion to strike out part of reply.

By Mr. Morrow: I object to it being filed or considered at this time for the reason that it is out of time, and we have announced ready for trial upon the record as made.

Objection as to filing overruled; plaintiff excepted at the time.

Said motion being as follows: (See Rec., p. 52.)

Plaintiff, to maintain the issues upon her part, introduced the following evidence:

PLAINTIFF'S EVIDENCE.

Plaintiff offers in evidence the policy sued upon, which is attached to and filed with the petition, dated September 4, 1893, Exhibit "A", and is as follows:

(See same opposite this page.)

CHARTS

TOO

LARGE

FOR

FILMING

Applicants and Agents will please note particularly the instructions on lower margin of this page and in column 10. Answer every question in writing. Dashes to indicate a negative answer are not acceptable. Careful compliance with instructions will avoid delay.

No. 174416 (a)
No. 174417 (a)
Kind
Be sure all above blanks.
Agent,
Gen'l Ag't, Mat. Zener,
Send Certificate to 509 Olive St.
At St Louis

APPLICATION.

I, Frank Barber,
(Full name in full of the person whose life is to be insured. Initials not sufficient.)
hereby apply for a CERTIFICATE of MEMBERSHIP, entitling
to Two Thousand Dollars, in the SAFETY
FUND SYSTEM of the HARTFORD LIFE AND ANNUITY IN-
SURANCE COMPANY, of Hartford, Conn., for the benefit of
Rosa Barber (wife)
(Name and Relationship.)
(If space is too limited, attach a slip.)
who has a lawful insurable interest in my life.

And I agree to make the Safety Fund Deposit according to the Company's requirements.

One-quarter of this Deposit is required to be paid on either the first day of March, June, Sept. or Dec. which next follows the date on which first dues become payable. Remainder, by one-third of Mortality Calls until completed. Earlier payment may be made, but delays that vary the above rule will not be permitted. If applicant is for Women's Division, deposit must be paid in proportionate installments as and when the dues are paid, so as to complete Deposit in first year of policy.

Do you desire to pay Safety Fund Deposit in a single payment or by four quarterly payments on the first day of March, June, Sept. and Dec.? no, as above noted

(1) Your residence: Place St Louis,
County X X X
State Missouri.
P. O. Address 900 Chambers St.
(Give Street and Number, or P. O. Box.)
If in a different place from your residence, give name of Post Office.

(2) Your occupation, profession, or trade (give full particulars.) Such terms as "Merchant," "Mechanic," "Laborer," are not sufficiently explicit. Baker & Confectioner

Are spirituous or malt liquors sold by you, either as proprietor or employee? no

Do you work at stone-cutting, grinding or polishing tools or metals; making explosives or poisonous chemicals, or at any employment commonly known as "hazardous"? (give full particulars.) no

(3) Your age, also place and date of your birth.
Place of birth Madison Co. Ills
(Give Town, County and State or Country.)
Year 1857 Month Dec. Day 6
Age at last Birthday 35
(Be sure this agrees with year of birth.)

(4) Are you married or single? Married.

(5) In what Companies, Societies or Orders is your life now insured, and to what amount in each?
$1000. H L & A Ins Co
$2000 Catholic Knights

(6) Has any Company, Society or Order declined to grant you a policy or membership? If so, named them, and when? no

(7) Have you ever been examined for Life Insurance or membership by any physician with an unfavorable result? no

(8) Have you now or ever had any Certificates in force in this Company? If so, state the amount, and number of each.
no 128293 $1000.

(9) Have you now or have you ever had any of the following affections or diseases? (Answer "yes" or "no" opposite each.)

Spitting of Blood, no — Liver Complaint, no — Fever and Ague, yes
Cancer, or any Tumors, no — Lumps, Swellings or Sores, no
Yellow Fever, no — Habitual Headache, no — Inflammation of Lungs, no
Chronic Cough, no — Neuralgia, no — Consumption, no
Rheumatism, no — Palpitation, no — Piles, no — Scrofula, no
Diseases of the Heart, no — Dyspepsia, no — Small Pox, no
Pleurisy, no — Syphilis, no — Paralysis, no — Apoplexy, no
Sunstroke, no — Rupture, no — Insanity, no — Fistula, no
Asthma, no — Dropsy, no — Colic, no — Fits, no — Gout, no
Diseases of the Urinary Organs or of any vital parts, no — Attacks of Dizziness, no — Fainting Spells or Attacks of Unconsciousness, no

(9) If you have ever had any of the foregoing diseases, state which, and in each case, how long since.
Fever & Ague 19 years ago.

(10) Have you now or have you ever had any other illness, Local or Constitutional Disease, or any serious Personal injury? If so, in each case, state what and how long since.
no.

Have you lost any time by sickness during the last three years? If so, how much?
no

Has any Surgical Operation been performed upon you? (Give particulars.)
no

(11) Have you been vaccinated within 7 years? no.

(12) Do you now possess a sound constitution and good health? yes.

(13) Is your Father living? no Age X
State of health X
Is your Mother living? no Age X
State of health X
Is your Father dead? yes Age at death 52
Cause of death accidental
Is your Mother dead? yes Age at death 30
Cause of death Childbirth

(14) How many Brothers have you had? none Ages and Condition of health of living Brothers X X

How many Sisters have you had? none Ages and Condition of health of living Sisters X X

(4) Ages at death and the cause of death of deceased Brothers?
none,

Ages at death and the cause of death of deceased Sisters?
none,

(15) Are your Grandparents living? (Answer below.)
Father's father no Age X Father's mother no Age X
Mother's father no Age X Mother's mother no Age X
Are your Grandparents dead? (Answer below.)
Father's father yes Age at death X Cause of death don't know
I know nothing of my Grandparents,
Father's mother yes Age at death X Cause of death don't know
Have heard they all lived to be old
Mother's father yes Age at death X Cause of death don't know
Mother's mother yes Age at death X Cause of death don't know

(16) Have either of your Parents, Brothers or Sisters, ever had Insanity, Consumption, Chronic Cough, or any Scrofulous, constitutional or hereditary disease?
no,

(17) Are your habits of life correct and temperate as to beer, wine, or other spirits? yes

Have they been so through life? yes

How many times each day do you drink spirituous liquors?
none

How many times each day do you drink malt liquors?
not more a day

Do you use opium, or other narcotics? no

(5) (18) For how many attacks of sickness within the last three years have you been attended by a physician, or have consulted one, and for what diseases? none,

Give date and duration of each attack X X X

Have you fully recovered therefrom? X X X

The following are the names and addresses of every Physician consulted in the last three years. Name them.
X X X X

(19) Name and residence of your usual Medical Adviser.
Dr George Pitzer St Louis, Mo.

(20) Have any facts regarding your past health or present condition been omitted in the foregoing answers? No.

I have verified each of the foregoing answers, adopt them as my own whether written by me or not and declare and warrant that they are full, complete, and literally true answers to the questions against which they are written; and I agree that the exact literal truth of each shall be a condition precedent to any binding contract issued upon the faith of the foregoing answers; I also agree that proof of the fact that the agent taking this application has knowledge of facts contrary to any of the foregoing answers, shall not make valid a certificate of membership issued on the faith of such answers.

Applicant's Signature. Frank Barber
Applicant to sign here as well as below.

I Do Hereby Agree That the foregoing answers and statements, together with the preceding declaration, warranty and agreements, shall form the basis of the contract between the undersigned and the HARTFORD LIFE AND ANNUITY INSURANCE COMPANY, and are offered to said Company by me as a consideration of the Contract applied for, and are hereby made a part of all Certificates that may be issued on this Application; and if there has been any concealment, misrepresentation, or false statement, or statement not true, made herein, and if I or my representatives shall omit or neglect to make any payment as required, in respect of amount, place, and time of payment, by the condition of such Certificates, then the Certificates to be issued hereon shall be null and void, and all money paid thereon shall be forfeited to said Company: And it is further agreed that the membership hereby applied for shall be subject only to the conditions and agreements contained in the Certificates of such membership to be issued hereon: And it is further agreed that the Company shall not be responsible under said Contract after my health shall be impaired by narcotics, alcoholic or other stimulants; and that if I shall die by self-destruction—whether sane or insane—the full measure of the Company's liability under said Contracts shall be the amount of the cash payments made thereon, unless positive proof of insanity be furnished the Company.

At St Louis Missouri
This 23 day of August 1893
I HAVE READ THE INSTRUCTION AS TO PAYMENT ON LOWER MARGIN AND ON PAGE 1.
Applicant's Signature. Frank Barber [L. S.]
Witness to both Signatures on this column. Dr Geo Pitzer
Signatures with "his X mark" must not be witnessed by Agent or Examiner.

Admission Fees of $4.00 for $500, $5.00 for $1,000, $10.00 for $1,500, $12.00 for $2,000, $13.50 for $2,500, $15.00 for $3,000, $18.00 for $4,000, and at the rate of $4.00 per $1,000 for $5,000 or more, (no rebate whatever from these fees being permitted), are authorized to be paid only upon delivery of Certificate to member. All other payments are to be made by member directly to the office of the Company, at Hartford, Conn., and not to any General, Special, State, District or Local Agent, nor to any one who does not first tender therefor a receipt signed by the Company's President or Secretary.
Register all letters containing Currency or Postal Notes.

Examiners will not make record of examination on this side unless the questions on other side are first fully answered. (See instruction on lower margin.) 1st class

Questions, each of which is to be answered by the MEDICAL EXAMINER.

N. B.—It is understood that the medical examiner will of course put such other Questions, bearing upon the case, as he may think proper, and that the whole examination will be thorough, exact and circumstantial, AND RECORDED IN THE HANDWRITING OF THE MEDICAL EXAMINER ONLY.

(1) Name and residence of the person examined.
Name Frank Barber
Residence St Louis Mo
Occupation Baker
(By its technical term if an operative.)

(2) How long have you known the applicant? Nine
Are you his physician? no

(3) State Height, Weight, Race, Circumference of Chest, Figure, and General Appearance.
Height 5 Feet 7½ Inches Weight 152
If there be a disproportion between the height and weight, please state particularly under "Additional Remarks" why, in your opinion, this disproportion exists.
Circumference of Chest under Clothing 36 Inches
Circumference of Chest at Expiration 34½ Inches
Circumference of Chest at Inspiration 37½ Inches
Race German Figure very good
General appearance healthy Does he look older or younger than the age written in application? looks his age Complexion Dark

(4) State number of respirations per minute 17
After careful auscultation and percussion do you find the lungs sound? Yes
If there are any physical signs of disease, state them clearly
none

(5) Is the heart normal in size? Yes
Are any cardiac murmurs to be heard? no

(6) State the rate and other qualities of the pulse 76
normal
Does it intermit, or beat irregularly? no

(7) Has the applicant ever had Acute Inflammatory Rheumatism?
no
If so, how many attacks? — Give the date of each attack.

(8) Is the applicant subject to Cough, Expectoration, Difficulty of Breathing or Palpitation?
no

(9) Has applicant any constitutional disease?
no

(10) If parents are dead, either or both, question the applicant closely, and name the diseases which caused death and ages at death.
Father Died of internal injuries from a Kick of a horse. The mother Died in Childbirth
Which parent does applicant most resemble?
he does not know

(11) Also, report carefully whether Consumption, Insanity, Apoplexy or Suicide have appeared in applicant's brothers and sisters, uncles and aunts or grandparents.
no

(12) If the applicant has had severe injuries or sickness, state carefully their nature and severity, and whether recovery has been complete.
had nothing more than trivial ailments from

If amputation has been performed, state exact point of amputation.

(13) Is the brain, and the muscular and nervous system in a healthy state?
Yes

(14) Are the abdominal and urinary organs in a healthy state?
Yes
Has the applicant now or has he ever had a Stricture of the Urethra?
no

Analysis of Urine passed at time and place of examination only

Albumen, no Specific Gravity, 1019
Sugar, no Reaction, acid
Was the urine examined passed at time and place of examination? yes

(15) Is Applicant ruptured? no What form; single or double?
Is it reducible? — Is a suitable truss worn?

(16) State here, after careful inquiry of applicant, to what extent Spirituous or Malt Liquors are used he uses beer sometimes; not habitually

(17) Do you consider applicant's life safely assurable, and do you recommend that a Certificate be issued? Yes

IF A FEMALE:

(1) Is she now pregnant?
(2) Have either of her grandmothers, her mother or any of her sisters had Cancer of the Breast or Uterus, or of any other organ?
(3) Has applicant now, or has she had at any time, any disease of the Uterus, Ovaries, or other Pelvic Viscera?
(4) Has she borne children? If so, how many?
Were her labors easy and natural? Give the date of her last confinement
(5) Have either of her grandmothers, her mother, or any of her sisters died in labor, or as a result of pregnancy or labor?
(6) Are the Breasts perfectly healthy, and free from pains, tumors or indurations of any kind?
(7) Is her Menstruation regular and healthy? If not, state the facts and the probable cause
(8) Has she ever miscarried? If so, how often?
What was the probable cause?
(9) Do you believe that applicant is now in good health and that she possesses healthy constitution?
(10) Does she lead an active or sedentary life?

Dated at St Louis
this 24th day of August 1893

It is hereby declared and warranted, that my answers to the above questions, so far as made to the Medical Examiner, are full and true and that I am the person who signed the application on opposite side and who was examined as above.

SIGNATURE OF PROPOSED ASSURED.
Frank Barber
To be signed in the presence of the Medical Examiner.

I hereby certify that the foregoing statements are correct, according to my knowledge and belief, and I have no interest in the avails of a certificate to be issued on the Life of above-named applicant.

I Graduated at
Give Name and Date of Graduation.
F. Hellmann
Signature of the Medical Examiner.

DO NOT FAIL TO MAIL THE FEE. SEE BILL TO HOUSE OFFICER ON DAY OF EXAMINATION.

ADDITIONAL REMARKS.

Under this head the Examining Physician is requested to explain any of the foregoing answers, where space did not permit; to name such diseases as the patient has suffered from, and their effects upon the health; and make such other memoranda in the spaces below as he may deem necessary to a full understanding of the case.

Has never had [illegible]

8/28/93

INSTRUCTIONS.

It is contemplated that each interrogatory upon an application shall not only receive an answer, but one giving full particulars in respect of the subject of the query; hence, in order to avoid delay in the acceptance of a risk, before transmitting an application to the Company's Office at Hartford, Conn., it should be carefully scrutinized, to ascertain that every question is replied to and every answer true and full.

Of special importance are the questions relative to occupation, age, health, habits, and family history of applicant; these should be answered in the fullest possible manner: for instance, the answer, "don't know" made to any questions, is extremely unsatisfactory, unless sufficient reasons are assigned for applicant's lack of knowledge. Terms for occupations, such as "mechanic," "clerk," "agent," "merchant," or "manufacturer," are too general in their significance; the specific occupation of the applicant is to be given. The "date of birth" should correspond with "age last birthday."

In all cases, let the Examining Physician fill his blanks, on pages 6, 7, 8, 9, in his own handwriting.

Examiners will particularly observe answers on other side and carefully elicit additional information upon every point necessary to full consideration of the case at Home Office.

his wife Rosa Barber if living,
otherwise to his legal representatives.

Plaintiff offers in evidence the file mark of the original petition, showing it was filed June 17th, 1911, as well as the entry below, $2.50 paid clerk by attorney. Exhibit "B". The same being as follows: "Filed June 17, 1911. W. H. Henshaw, Clerk Circuit Court. $2.50 paid clerk by attorney."

Plaintiff offers in evidence the answer filed by the defendant herein on the 11th day of January, 1912, Exhibit "C", which is as follows: (Said answer was in form a general denial.)

Plaintiff offers in evidence stipulation, Exhibit 1, which is as follows: Which is an agreement that the letter which follows was signed by T. F. Lawrence, secretary of the defendant company.

Plaintiff offers in evidence letter dated July 8, 1910, from T. F. Lawrence, secretary of the Hartford Life Insurance Company, to Morrow & Kelley, which is attached to the stipulation, Exhibit 2, which is as follows:

EXHIBIT No. 2.

HCL

July 8th, 1910.

Messrs. Morrow & Kelley,
808 Laclede Bldg.,
St. Louis, Mo.

Gentlemen:

We have your two favors of the 1st inst., and would state in the first place that this company did not take over the Hartford Life & Annuity Insurance Company. The name of this company was at one time the Hartford Life & Annuity Insurance Company. In 1897, by a special act of the Connecticut Legislature, the name was changed to the Hartford Life Insurance Company, but the Hartford Life Insurance Company is exactly the same corporation as was the Hartford Life & Annuity Insurance Company, and this corporation is carrying out the contracts of the Hartford Life & Annuity Insurance Company under the name of the Hartford Life Insurance Company.

In reference to certificates Nos. 128293 and 174416 on the life of Frank Barber, we have to advise you that these certificates were issued February 14th, 1890, and September 4th, 1893, respectively, and **lapsed for non-payment of the call due March 1st, 1910**, were then canceled in accordance with their terms, and are now of no effect. The certificates were carried at exact cost, the payments made having covered only the dues stipulated in the contract for expenses, the stipulated deposit to the safety fund, and the member's share of the actual death losses incurred in the Men's Division of the Safety Fund Department of the company.

There is no reserve which could have been applied for any surrender value, and the certificates provided for death indemnity only and that only in case they were in full force and effect.

There is no liability on the part of the company on account of these certificates, and we are therefore not complying with your request and forwarding you blanks for proof of death as the member did not die while the certificates were in full force and effect.

Yours very truly,
T. F. Lawrence,
Secretary.

It is admitted that Charles E. Morrow and Robert Kelley are attorneys for plaintiff in this case.

Plaintiff offers in evidence file mark on the back of defendant's answer to plaintiff's amended petition on October 5, 1912, Exhibit 3, which is as follows: "Filed October 5, 1912. W. H. Henshaw, Clerk Circuit Court."

Plaintiff offers in evidence file mark on the back of the amended answer to the plaintiff's amended petition, where we are trying this case now, which has been twice amended by interlineation, filed November 25, 1912, Exhibit 4, which is as follows: "Filed November 25, 1912. W. H. Henshaw, Clerk Circuit Court."

Plaintiff offers in evidence certified copy of annual statement of the Hartford Life Insurance Company, filed with the Superintendent of Insurance of the State of Missouri for the year ending December 31, 1909, Exhibit 5.

To which the defendant objects, because it is wholly incompetent and immaterial to any issue in this case, and because the matters set forth in said report are not matters which are required by law, and the matters in said report to which the plaintiff calls attention are not matters which are required to be set forth by law, and because it is not shown that the matters contained in said report were made either within the knowledge of the person and certified thereto or that they were within the duties of the officer or agent who made the statement to the Insurance Department; and because the matters sought to be proved by said report are not within the issues made by the pleadings, nor is there any notice by the pleadings that such proof would be offered, because the statement does not show nor tend to show any fact as it existed at the time the mortuary call was levied or when the same was payable.

Also object that the statement contained in said report relates to a time long anterior to the lapse of the policy, and such statements are therefore immaterial.

And object, further, that this Insurance Company issued a great number or class of policies and a large portion of that has no reference whatever to the class of policy sued on here.

By Mr. Morrow: I understand I had to offer this

as a whole, and if Mr. Suddath objects to any particular class of policies that are not connected with this action here and will designate it, I will be glad to take it up now, because I couldn't offer this by piecemeal.

By Mr. Suddath: I see on these pages you call attention to policies that don't belong to this class at all and therefore would not be admissible at all.

By the Court: Objection overruled. If they have nothing to do with the policy here in dispute, of course, it would be irrelevant.

Defendant excepted at the time.

JAMES A. KEMPER,

being sworn upon the part of plaintiff, testified as follows:

Direct Examination, by Mr. Morrow.

Q. What is your name? A. James A. Kemper.

Q. Where do you live, Mr. Kemper? A. Warrensburg.

Q. How long have you lived here? A. Seventeen years yesterday.

Q. What is your profession? A. Practicing law.

Q. How long have you been an attorney-at-law? A. About eighteen years and a half.

Q. Have you been practicing at this bar for that number of years? A. Seventeen years.

Q. Mr. Kemper, there is a case now on trial before this jury entitled Rosa Barber, plaintiff, against the Hartford Life Insurance Company, defendant, upon a policy or certificate of insurance for two thousand dollars; the answer of the defendant covers a number

of pages and pleads, first, that the policy lapsed by reason of the failure to pay an assessment or mortuary call and dues and taxes, and second, that the matters in question with reference to the mortuary fund have been formerly adjudicated by a court of competent jurisdiction of the State of Connecticut, in the Supreme Court of the State of Connecticut, and also that the statute of Missouri, known as number 7068, with which you are familiar, which provides for the imposition of a penalty against a life insurance company for vexatious refusal to pay a loss, is unconstitutional; the reply is, first, a general denial, second, it pleads that by reason of certain statements and conduct the defendant is now estopped to assert the defenses with reference to the taxes and dues, and third, that the constitutional questions are not raised in good faith; there was a notice served to take depositions in this case and another case between the same parties involving a policy of insurance for a thousand dollars, where the issues were somewhat similar, and the depositions were taken under that notice in the City of Hartford, Connecticut, for three days, commencing on the 17th, 18th and 19th days of September, 1912; the plaintiff's attorney had to travel from St. Louis, Missouri, to the City of Hartford, Connecticut, and attend to the taking of these depositions; the depositions covering 167 pages of typewritten matter; a number of exhibits, taking up the letters of the alphabet and going from A to Z one time and then doubling the letters over again to MM; the trial of this case will in all probability take about two days; what, in your opinion, is a reasonable attorney's fee for the plaintiff? A. May I ask a question. Did you state the amount involved in this?

Q. Two thousand dollars.

By Mr. Suddath: We object, for the reason that this question—it omits the facts it has already been on trial.

By Mr. Morrow: I should be glad to amend the question as suggested by the gentleman, and state that the other case was tried, result being favorable to the plaintiff, and she recovered $250 attorney's fee on the thousand dollar policy in this court before a jury.

By Mr. Suddath: That is further than my suggestion went, and I object to the additional, that there was a fee allowed of $250.

Q. I accept the amendment of Mr. Suddath's suggestion, and ask you to state under the question as heretofore amended by Mr. Suddath, what would be a reasonable attorney's fee for the plaintiff in this action? A. Well, basing my opinion upon the facts as indicated and stated I think that from $500 to $550 would be a very reasonable fee, and that $600 would not be an unreasonable fee.

Cross-Examination, by Mr. Suddath.

Q. Do you understand, Mr. Kemper, that the same trip covered both cases and it was all taken in one deposition, the two cases? A. Well, I concluded that.

Q. And the $250 in that one case and $500 in the other, making $750? A. I really didn't take into account the expenses of the trip down there. Of course, it saved one trip, that is true.

Q. Not only saved one trip, but saved the same time? A. Yes, I say it did.

Q. Would you make any change for that? A. I made the change when I said from $500 to $550 attorney's fee, if it had been just the one case and nothing else in-

volved, I would think $600 would be a mighty small fee, considering all those matters.

Q. Do you mean to say then if was just one trip that $600 would be—one case and one trip—it would be $600? A. That would be my opinion.

Q. Then if there was an allowance of $250 fee in the other matter for the same trip, shouldn't it be graduated according to that? A. I wouldn't think so, with two cases to try.

R. M. ROBERTSON,

being sworn upon the part of plaintiff, testified as follows:

Direct Examination, by Mr. Morrow.

Q. Will you please state your name? A. R. M. Robertson.

Q. What is your profession? A. Lawyer.

Q. How long have you been a lawyer? A. Since '78.

Q. Where have you practiced? A. Here at this bar.

Q. Did you hear the question just propounded to Mr. Kemper and the statements made by Mr. Suddath? A. Yes, sir.

Q. You understand it? A. Yes, sir.

Q. Will you please state to the jury in answer to the question, what, in your opinion, would be a reasonable attorney's fee for that service? A. In this case, taking into consideration the other, as I understood it, from four to five hundred dollars.

Plaintiff here rests her case.

Defendant demurs to the evidence of the plaintiff, as follows:

The Court instructs the jury that under the plead-

ings and plaintiff's testimony and the law, your verdict must be for defendant.

Which demurrer was by the Court overruled; defendant excepted at the time.

Defendant, to maintain the issues upon its part, introduced the following evidence:

DEFENDANT'S EVIDENCE.

Defendant offers in evidence stipulation with the original exhibits attached, Exhibit 6.

Which is as follows:

EXHIBIT No. 6.

STIPULATION.

In the Circuit Court of Johnson County, Missouri.

Rosa Barber, Plaintiff,
vs.
Hartford Life Insurance Company, Defendant.
} No. 4619.

It is hereby stipulated and agreed by and between Rosa Barber, plaintiff, and the Hartford Life Insurance Company, defendant, as follows:

1. That the paper hereto attached, dated February 4, 1890, purporting to be an application of Frank Barber for policy No. 128293, a copy of which is Exhibit "B", to the deposition of T. F. Lawrence heretofore taken in the above-entitled cases, was signed by Frank Barber.

2. That the paper hereto attached, dated August 23, 1893, purporting to be an application of Frank Barber for policy No. 174416, a copy of which is Exhibit "C"

to the depositions of T. F. Lawrence heretofore taken in the above-entitled cases, was signed by Frank Barber.

3. That the envelope hereto attached, a copy of which is attached to the said depositions of T. F. Lawrence, was originally sent by the Hartford Life Insurance Company; that Frank Barber erased the number "2637 N. Sarah street" and endorsed that which now appears in handwriting, "4201 Pleasant street."

4. That on the postal card hereto attached, copy of which is Exhibit "R" to the deposition of said Lawrence, Frank Barber wrote in the blanks provided therefor the written words which now appear in said postal card, to-wit: "St. Louis, 3/12/6," and "4201 Pleasant street, St. Louis, Mo.," and Frank Barber signed his name at the bottom of said card.

5. That the paper hereto attached, being letter from Frank Barber, dated December 3, 1909, a copy of which is Exhibit "X" to the said depositions of T. F. Lawrence, was actually written and signed by Frank Barber.

6. That the paper hereto attached marked "Registry Return Receipt, Orig. Reg. No. 2026," a copy of which is made Exhibit "U" to said depositions of T. F. Lawrence, was signed by Frank Barber, which notice and accompanying documents are marked Exhibits "S-1" and "S-2" to the said depositions of T. F. Lawrence.

7. That the paper hereto attached marked "Registry Return Receipt, Orig. Reg. No. 2197," a copy of which is made Exhibit "V" to said depositions of T. F. Lawrence, was signed by Frank Barber, which notice and accompanying documents are marked Exhibits "T-1" and "T-2" to said depositions of T. F. Lawrence.

8. That the letter hereto attached without date, a

copy of which is Exhibit "G-G" to the said depositions of T. F. Lawrence, was written and signed by Frank Barber.

ROBERT KELLEY and
CHARLES E. MORROW,
Attorneys for Plaintiff.
JONES, HOCKER, HAWES & ANGERT,
Attorneys for Defendant.

Defendant offers in evidence deposition of Thomas F. Lawrence. Which said deposition, together with exhibits therein referred to, is as follows:
Circuit Court, County of Johnson, State of Missouri.

Rosa Barber
vs.
Hartford Life Insurance Company. } No. 4619.

The following depositions are taken in the above-entitled causes pursuant to the consent of parties and notices to take depositions hereto attached, on this 17th day of September, 1912, at 11 o'clock a. m., all formal notice and issue of *dedimus* and other formalities being hereby waived; the plaintiffs in these cases being represented by Charles E. Morrow and the defendant being represented by James C. Jones.

It is stipulated between the parties that the testimony about to be taken may be used in either of said cases so far as material or relevant.

The signature of the witnesses in all instances is waived.

It is further stipulated that unless at the time it is offered objection is made to an exhibit because it is a copy, copies of original papers attached to this deposition may be used with the same force and effect as originals, the same having been properly testified about by the witness as a copy.

It is stipulated that the testimony about to be taken

may be taken in shorthand by Nellie W. Annis, a Notary Public, and may thereafter be transcribed out of the presence of the witnesses.

It is further stipulated that the witnesses in these cases shall be sworn by Miss N. W. Annis, a Notary Public in and for the City of Hartford, County of Hartford, and State of Connecticut.

If at the close of depositions on behalf of the defendant the plaintiff in either of said cases desires to take testimony in her behalf, said testimony may be taken pursuant to and controlled by the foregoing stipulations.

It is further stipulated that the exhibits may be bound separately from the depositions and filed in the Court with the depositions, but that said exhibits shall be properly identified and attested by the Notary.

THOMAS F. LAWRENCE,

having been duly sworn by Nellie W. Annis, Notary Public, in answer to interrogatories by Mr. Jones, testified as follows:

Q. State your name, age, residence and occupation, please. A. My name is Thomas F. Lawrence; I reside in the City of Hartford, Connecticut; am thirty-five years old, and my occupation is that of vice-president and secretary of the Hartford Life Insurance Company.

Q. How long have you been vice-president of the Hartford Life Insurance Company? A. Since May, 1.

Q. How long have you been secretary of the Hartford Life Insurance Company? A. Since September, 1907.

Q. Prior to that you were what? A. Prior to that

I was assistant secretary of the company from December, 1903.

Q. Who was formerly the secretary of the Company? A. Charles H. Bacall.

Q. Is he living or dead? A. He is dead. He died in 1907; I think in the month of March.

Q. What is the paper I now show you? A. That is a copy of the charter of the Hartford Life Insurance Company, with all amendments thereto.

Q. This paper with the amendments is the charter and amendments as they existed after May 12, 1903, and up to the present time, the paper referred to being a copy of charter of the Hartford Life Insurance Company? A. It is.

The defendant offers paper referred to in evidence and is marked Defendant's Exhibit A.

The same being as follows:

EXHIBIT A.

CHARTER
of the
HARTFORD LIFE AND ANNUITY
INSURANCE COMPANY.

At a General Assembly of the State of Connecticut, holden at New Haven, in said State, on the first Wednesday of May, in the year of our Lord One Thousand Eight Hundred and Sixty-Six:—

Incorporating the Hartford Accident Insurance Company.

Resolved by the Assembly:—Sec. 1. That D. F. Seymour, Charles H. Northam, E. N. Kellogg, John A. Butler, C. M. Pond, Austin Dunham, E. H. Fenn, Hiram Bissell, Elisha T. Smith, William Hammersley, E. Thomas Lobdell, Stiles D. Sperry, Milo Hunt, John W. Danforth, Chester Adams, D. A. Rood, George Sexton, Joseph H. Sprague,

H. W. Conklin, H. C. Beckwith, F. A. Marey, C. C. Kimball, James B. Crosby, Julius Converse, H. C. Robinson, J. E. Coleman, Jacob Knous, John R. Buck, and all such persons as hereafter may become duly associated with them as stockholders, their successors and assigns forever, be, and they are hereby constituted a body corporate and politic, by the name of the "Hartford Accident Insurance Company," and by that name shall be and hereby are empowered to purchase, have, hold, possess and enjoy to themselves and their successors, lands, tenements, hereditaments, goods, chattels, effects, real and personal estate of every kind; and the same to sell, grant, alien, convey and dispose of; to sue and be sued, plead and be impleaded in all courts of justice; to adopt and use a common seal, and the same to change at pleasure; and to enact and enforce such by-laws and regulations as they may deem proper for the well ordering and government of said corporation; provided, that such by-laws and regulations be not repugnant to the constitution and laws of this State, or of the United States.

Sec. 2. The capital stock of said corporation shall be not less than two hundred thousand dollars, and at any time hereafter may be increased by said corporation to any sum not exceeding one million dollars, and shall be divided into shares of one hundred dollars each; and each subscriber to said capital stock shall pay into the treasury of said corporation, at the time of subscribing, an installment of ten dollars on each share of stock by him subscribed; and within sixty days after the organization of said company shall secure the payment of the remaining ninety dollars on each share, either by such bonds and mortgages on real estate, or by such endorsed promissory notes

as shall be approved of by two-thirds of the directors of said corporation; and the money so secured to be paid, shall be payable in such installments, and at such times, as the directors may determine; and such endorsers shall have a lien on the stock for which such note or notes are given.

Sec. 3. The office of said Company shall be located at Hartford, and all the affairs of said corporation shall be managed and controlled by a board of not less than seven directors (the number of said directors to be determined by the by-laws of said Company), who shall be chosen from among and by the stockholders, which choice shall be made by a majority of the votes cast; and said directors shall hold office for one year, and until others are chosen in their stead; and the annual meetings for the choice of said directors shall, after the first election, be held at the city of Hartford, on the first Tuesday in May, in each year, or in such other day in the month of May as shall be appointed by the by-laws of said corporation. In the choice of directors as aforesaid, each stockholder present, or represented by his attorney, shall be allowed one vote for each and every share of stock by him then held; and the stockholders may determine what number of directors may constitute a quorum for business.

Sec. 4. If it shall so happen that an election of directors of said corporation shall not take place at the time of the annual meeting thereof, in any year, said corporation shall not be dissolved thereby, but an election may be had at any time within one year thereafter, the time to be fixed upon and notice given by the directors last chosen, and public notice by orders of the directors shall always be given at least ten days previous to any meeting of the stockholders, in a newspaper

printed in Hartford, and in such other way as may be deemed expedient; and the president shall have power to call special meetings of the stockholders whenever thereto requested by a majority of the directors.

Sec. 5. The directors may, by a major vote, fill any vacancy which may occur in their board between the annual meetings of the stockholders, by choosing a director or directors from among the stockholders, who shall continue in office until a successor or successors shall be chosen; and the directors may choose a president and vice-president of their corporation from their own number, and a secretary, and may appoint such other officers, clerks and agents, and establish such agencies in this State and elsewhere, as they may deem necessary and convenient, fix their compensation, take bonds of any and all of them for the faithful performance of their duties, make such covenants and agreements as may be deemed necessary, and perform such other acts, and exercise such other powers as they shall deem expedient for the well ordering of the affairs of said Company. The president and vice-president may hold their office for one year, and until others are chosen, but the other officers, agents and servants of said Company may be displaced and new ones appointed at the pleasure of the directors. In the absence or disability of the president, the vice-president shall preside, and if both are absent or disabled, the directors shall choose a president, *pro tempore*.

Sec. 6. Said corporation may insure persons against and make all and every insurance connected with accidental loss of life, or personal injury sustained by accident of every description, on such terms and conditions and for such periods of time, and confined to such countries and such per-

sons as shall be from time to time ordered and provided for by the by-laws of said corporation; and may make insurance based upon the lives of persons, and may make contracts upon any and all conditions appertaining to or connected with life risks; and suits at law may be maintained by any stockholder or person insured by said Company against said corporation, for losses or injuries insured against by said Company, in accordance with the terms of the contract of insurance and the form of the policies issued by said Company, if payment shall be withheld for more than thirty days after the same shall be and become payable by the terms of the policy of insurance or other contract, and after said corporation shall have been duly notified of such loss or injury; and said policies of insurance and all other contracts of said Company may be made with or without the common seal of said Company, and shall be binding and obligatory on said corporation according to the true intent and meaning of such policies or contracts. No stockholder shall be responsible in his private capacity and estate for any debt or liability of said Company, but in case of a violation of the charter, intentionally, or of fraud, the person guilty thereof shall be personally liable to said corporation, or to the assured, as the case may be.

Sec. 7. To carry out the provisions of this act, and to organize the said corporation, Jasper H. Bolton, Stiles D. Sperry and E. Thomas Lobdell are authorized and appointed to receive subscriptions to the capital stock thereof, and the first installment thereon, and are authorized to close the subscription books of said Company when the capital stock shall be fully subscribed, or in case that said capital stock shall be over-subscribed, to dis-

tribute and apportion the same among the subscribers as the said persons so appointed as aforesaid to distribute may deem proper. And when the capital stock shall have been subscribed for, and the first installment has been paid thereon, and a notice published in some newspaper printed in Hartford three weeks before the time of meeting, the said subscribers may meet together at the time and place named in said notice, and adopt such by-laws, rules and regulations as may be necessary and convenient for commencing and carrying on business under this act. They may also, at the same or some subsequent time, choose a board of directors in the manner hereinbefore provided, who shall hold their offices, with all the powers given to directors by this act, until others are chosen to supply their places. And when the by-laws have been adopted, and the directors have been chosen as aforesaid, and when the board of directors shall have been organized by the choice of a president and secretary, the said corporation may exercise all the powers and privileges conferred by this act.

Sec. 8. This resolution shall take effect from the date of its passage, and may be altered, amended or repealed at the pleasure of the General Assembly.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the first Wednesday of May, in the year of our Lord One Thousand Eight Hundred and Sixty-Seven;—

Amending the Charter of the Hartford Accident Insurance Company.

Upon the petition of the Hartford Accident Insurance Company, of Hartford:

Resolved by this Assembly:—Sec. 1. That the name of said company be, and the same hereby is,

changed to that of the Hartford Life and Accident Insurance Company.

Sec. 2. All actions, or causes of action, suits or demands, of any and every kind; and all the rights, duties and privileges; and all the estate, real, personal, or mixed; and all debts due to and from said Company; under the name of the "Hartford Accident Insurance Company," shall be and remain to and against said Company, by the name and style of the "Hartford Life and Accident Insurance Company," the same as if said original name had not been changed.

Sec. 3. The capital stock of said Company existing and established under the name of the "Hartford Accident Insurance Company," as well as that which shall be created hereafter under the name of the "Hartford Life and Accident Insurance Company," shall be held subject to and transferable in accordance with the charter and by-laws of said Company, the same as if the name of said Company had not been changed. And the subscribers or holders of said capital stock shall make payment for the same in such installments, and at such times and places as the directors shall determine. And if any subscriber, or any holder of any share or shares of said capital stock shall neglect or refuse to pay any installment as aforesaid, or shall neglect or refuse to secure the payment of any unpaid portion of his stock as aforesaid, for the space of thirty days after the same shall be required or become due, and after he or they have been notified thereof in accordance with the by-laws, the stock of such negligent stockholder may be sold by the directors, at public auction, at the Brokers' board in the city of Hartford, or elsewhere, as the directors shall elect; and of any such sale notice shall be given, at least

twenty days prior to the sale, by one or more publications in some newspaper printed in Hartford; and the proceeds of such sale shall be first applied in payment of the installment or installments called for, and the expenses attending the sale, and the balance, if any, shall be refunded to the owner of said stock; and such sale shall in all respects entitle the purchaser to all the rights of a stockholder, to the extent of the shares so bought.

Sec. 4. Said company may issue policies for the benefit of, and payable to, any married women, or child or children; and any contract of insurance, thus issued, by whomsoever the same may have been procured, shall be to the extent expressed in the policy, the sole and separate estate of the married woman, child, or children, to whom the policy, by its terms, shall be payable. And the discharge of such policies by such married woman or her assigns, or by such children (or their guardians if minors), shall be a valid discharge of the same. And said company shall be, and hereby is authorized to re-insure any and all risks taken under its charter, and upon such conditions as may be prescribed or approved by the directors.

Sec. 5. Said company may from time to time invest, collect and re-invest the whole or any portion of its capital and assets, in any bonds or stocks of the United States, or of any of the States of the United States, or of any corporations which are or may be created under authority of the United States or of any of said States; or in notes or bonds, secured by mortgage of real estate or otherwise; as shall be approved by the directors and in conformity with the charter and by-laws of said company.

Sec. 6. It shall be the duty of said company to reserve out of its receipts an amount sufficient to

re-insure all its outstanding life-risks of whatever description, other than mere accident risks said amount to be computed upon an assumption of mortality at the rates known as the "Actuaries" or "Combined Experience" rates, and at a rate of interest of not less than four per cent nor more than five per cent per annum, as the directors shall from time to time determine; and such reserve shall be exempt from any liability for losses or claims arising from any general accident policy or contract insuring against death or disability caused by accident; and no dividend or interest shall be paid to either stockholders or policyholders by which payment said reserve would be reduced below the minimum amount required by the provisions hereof. Provided, that nothing herein shall be construed to exempt the capital stock of the company from liability for all its contracts.

Approved, May 22d, 1867.

At a General Assembly of the State of Connecticut, holden at New Haven, in said State, on the first Wednesday of May, in the year of our Lord, One Thousand Eight Hundred and Sixty-Eight:—

Amending the Charter of the Hartford Life and Accident Insurance Company.

Upon the petition of The Hartford Life and Accident Insurance Company, of Hartford:

Resolved by this Assembly:—Sec. 1. That the name of said Company be, and the same hereby is, changed to that of the Hartford Life and Annuity Insurance Company.

Sec. 2. All actions or causes of actions, suits or demands of any and every kind, and all rights, duties and privileges, and the estate, real, personal, or mixed, and all debts due to or from said Company under the name of the "Hartford Life and

Accident Insurance Company," shall be and remain to and against said Company, by the name and style of the "Hartford Life and Annuity Insurance Company," the same as if their said name had not been changed.

Sec. 3. Said Company are authorized and empowered to grant or purchase annuities, confer endowments and make contracts, upon any and all conditions appertaining to, or connected with life risks, annuities and, reversionary interest of whatever kind or nature.

Sec. 4. This act shall take effect from and after its passage.

Approved, June 17th, 1868.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday in January, in the year of our Lord, One Thousand Eight Hundred and Seventy-Nine:—

Authorizing a Reduction of the Capital Stock of The Hartford Life and Annuity Insurance Company.

Resolved by this Assembly:—That the Hartford Life and Annuity Insurance Company, Hartford, Connecticut, be, and they hereby are, authorized to reduce their capital stock from the sum of three hundred thousand dollars to an amount not less than two hundred and fifty thousand dollars.

Approved, February 27, 1879.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday, in January, in the year of our Lord, One Thousand Eighth Hundred and Eighty-Two:—

Amending the Charter of the Hartford Life and Annuity Insurance Company.

Resolved by this Assembly:—That section six of an amendment to the charter of the Hartford Life and Annuity Insurance Company, approved May twenty-second, 1867, shall be and hereby is amended to read as follows:

Section 6. It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks of whatever description other than mere accident risks, and other than such contracts as it has made or may make wherein the sum payable upon the death of the person named in any such contract is made contingent upon an assessment collected from the associated holders of such contracts, said amount to be computed upon an assumption of mortality at the rates known as the actuaries' or combined experience rates, and at a rate of interest of four per cent per annum; and such reserve shall be exempt from any liability for losses or claims arising from any general accident policy or contract insuring against death or disability caused by accident, and no dividend or interest shall be paid to either stockholders or policyholders by which payment said reserve would be reduced below the minimum amount required by the provisions hereof; provided, that the capital stock of the company shall be liable for all its contracts without exemption by reason of anything herein contained.

Approved, April 25, 1882.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday in January, in the year of our Lord, One Thousand Eight Hundred and Ninety-Seven:—

Resolved by this Assembly:—Section 1. That the corporate name of the Hartford Life and An-

nuity Insurance Company, a corporation located and doing a life insurance business in Hartford, in this State, be and the same is hereby changed to the Hartford Life Insurance Company, by which name it shall be hereafter known and called.

Section 2. All contracts, rights, obligations, property, privileges and franchises of the said Hartford Life and Annuity Insurance Company shall be and remain unimpaired and vested in the corporation under its new name.

Approved, March 3, 1897. Adopted, May 11, 1897.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday in January, in the year of our Lord, One Thousand Nine Hundred and Three:—

Amending the Charter of The Hartford Life Insurance Company.

Resolved by this Assembly:—Section 1. That the Hartford Life Insurance Company is hereby authorized to insure persons against loss of time and expense resulting from disease.

Section 2. This resolution shall take effect when approved by a majority vote of the stockholders of said Company, and a certified copy of said vote of approval shall be lodged on file in the office of the Secretary of the State.

Approved, May 12, 1903.

State of Connecticut, } ss.
Office of the Secretary. }

I, ..., Secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the Acts and Resolutions of the General Assembly of said State, Do Hereby Certify that I have compared the an-

nexed copy of the Resolution Incorporating The Hartford Accident Insurance Company and the several amendments thereto, with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I Further Certify, That the said original record is a public record of the said State of Connecticut, now remaining in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said State, at Hartford, this

Secretary.

Q. I call your attention to the following portions of charter, being section 6 of the original charter, which reads "and may make insurance based upon the lives of persons, and may make contracts upon any and all conditions appertaining to or connected with life risks." I also call your attention to section 6, amendment of May 22, 1867, relating to the duty of the company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks", etc., and to the amendment of April 25, 1882, section 6, which provides as follows: "It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks of whatever description, other than mere accident risks and other than such contracts as it has made or may make, wherein the sum payable upon the death of the person named in any such contract is made contingent upon an assessment collected from the associated holders of such contracts", and I ask you to state whether the Hartford Life Insurance Company has written both legal reserve or level premium contracts, and whether

it has written assessment contracts, wherein, speaking generally, the sum payable upon the death of the holder of the contract is made contingent upon assessments collected from associated holders of such contracts? A. It has.

Q. What is the general designation that you apply to your assessment business? A. We designate our assessment business as safety fund business.

Q. What class of business did the company first begin to write and when? A. The company first wrote legal reserve insurance in 1867.

Q. And continued to write legal reserve insurance up to what date? A. Until the end of 1879.

Q. Did it then begin to write assessment insurance business or safety fund business? A. Yes, the first of the year 1880.

Q. At that time did it cease to write new business on the legal reserve or old line basis? A. It did.

Q. And continued only to write safety fund or assessment business? A. Yes, until 1899.

Q. In 1899 did it cease to write new business in the safety fund department? A. It did.

Q. And began the writing of what kind of business? A. Of legal reserve business.

Q. And since 1899 has it written any new business in the safety fund business? A. It has not.

Q. What is the paper which I now show you? A. It is the application of Frank Barber on which certificate 174416 was issued September 4, 1893, in the men's division of the safety fund department of the Hartford Life Insurance Company on his life. This paper was taken from our files of original applications.

Q. Is that the only application which you have for the policy last referred to, 174416? A. It is.

The defendant offers paper last referred to in evidence, which is hereto attached and marked "Defendant's Exhibit C".

Said exhibit is attached to defendant's answer and set out in full on pages 13 to 21 in this record.

Q. Is that the only application which you have from Frank Barber for that policy? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit C.

Mr. Morrow: I object to the paper being offered in evidence for the reason it is not shown that it was signed and executed by Frank Barber.

(Objection withdrawn.)

Said exhibit is attached to defendant's answer and is set out in full on pages .. to .. in this record.

Q. Now, at the top of upper left-hand corner of one of the pages, on one side of Exhibit C, appears the number 174416. Please explain that number, how it came there, when put there, and what it indicates. A. That is the number of the certificate which was issued to Frank Barber on that application. That number was put there after the receipt of the application at the home office of the company and at the time of the issue of the certificate, and corresponds to the number that was given to the certificate.

It is stipulated by and between attorneys that these copies of policies now about to be offered by the defendant may be used in this case the same as the originals unless it shall appear that there is some difference between the copies now offered and the orig-

inals, in which event the originals shall be used and the copies shall not be offered.

Q. State whether that policy was issued pursuant to the application, which has been marked Exhibit C? A. It was.

Q. What is the paper that I now hand you? A. It is a copy of certificate 174416 which was issued in the men's division of the safety fund department of the Hartford Life Insurance Company to Frank Barber of St. Louis, on the 4th day of September, 1893.

Q. Was the original of that certificate issued pursuant to the application heretofore referred to and marked Exhibit D? A. It was.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit E".

By Mr. Morrow: I object to that, for the reason the original is offered in evidence, and is the best evidence.

By the Court: Unless there is something pointed out the stipulation will control. Objection overruled.

Plaintiff excepted at the time.

Which said exhibit is original policy (see Rec., p. 57, "Exhibit A").

Q. Attached to and being the third page of Exhibits D and E, and referred to in the policy, is a copy of what is designated the trustee's contract, being a contract between the Hartford Life Insurance Company and the Security Company, of date December 31, 1879. Do you know whether that is or is not a copy of the trustee's contract of that date? A. I know that it is a correct copy of the original trustee's contract of that date.

Q. Was it pursuant to that trustee's contract of

date December 31, 1879, that the Safety Fund Department of the company was begun and started? A. It was.

Q. How are the certificates, of which Exhibits D and E are copies, designated by you in the operation of the Safety Fund Department, for the purpose of differentiating them from other certificates in the Safety Fund Department? A. We designate them as the original Safety Fund certificates.

Q. Or regular Safety Fund? A. Or regular Safety Fund, yes.

Q. Now, the term "regular Safety Fund" or "original Safety Fund" certificates includes what particular forms of polices as differentiated from other forms of policies? A. It includes all of the Safety Fund certificates which had the original or lower table of rates.

Q. Indorsed on the certificates? A. Indorsed on the back of certificates.

Q. On the back of certificates, Exhibits D and E, there is a table of rates, and will you please state whether that is what you have referred to as the original table of rates? A. It is.

Q. When was it that you adopted the new or higher table of rates? A. In the year 1894.

Q. And up to 1894 were the certificates issued in the Safety Fund Department issued upon the old or original table of rates, a copy of which is attached and is indorsed on Exhibits D and E? A. They were.

Q. What other classes or forms of policies were issued in the Safety Fund Department besides the original or regular Safety Fund certificates? A. There were several forms, designated by numbers, issued in the Men's Division of the Safety Fund Department

besides the regular assessment forms—Form 3, Form 4, Form 3½.

Q. What is the paper which I now show you and which will be marked Exhibit F? A. It is a copy of the form on which the so-called Form 3 certificates were issued in the Men's Division of the Safety Fund Department of the company subsequent to 1894.

Q. Such designation appearing on the bottom of the first page in the left-hand corner—"Form 3"? A. That is right.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit F, which said exhibit is as follows:

EXHIBIT F.

FORM 3. POLICY.

This policy was in substantially the same form as the policy sued on except that it was based upon and had attached thereto the later and higher rate table, Exhibit J, instead of the original rate table found on the policy sued on in this case (Plaintiff's Exhibit 1). Said original rate table is also Exhibit I.

Q. What is the paper I now show you? A. That is a copy of the form on which the so-called Form 4 certificates were issued in the Men's Division of the Safety Fund Department of the company subsequent to 1894.

Q. And the form number of that appears at the bottom of the first page in the left-hand corner—"Form 4 S. F. D."? A. It does.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit G:

EXHIBIT G.

Form of Policy.

The substance of this policy exhibit is as follows:

In Consideration of the agreements and warranties made in the application herefor, does hereby issue this Certificate of Membership and Policy of Membership and Policy of Insurance to .... (herein called the member) of ....., County of....., State of ..... And in further consideration of an advance payment of..... /100 dollars, to be made at the date hereof, and of like payments to be made on the ..... day of ..... in every successive year in the seven years then commencing, and of the subsequent payments to be made as required by the fourth condition hereof, the said company does hereby insure said member during his lifetime, subject to the following agreements:

That ninety days from the receipt by the company's President or Secretary of satisfactory proofs of the manner and cause of the death of the member, executed as required by the forms furnished by the company upon notice to it of said death, together with full report of any inquest, all the conditions hereof having been conformed to—upon surrender hereof (receipted to the company's satisfaction), at its Home Office in Hartford, Conn., where all payments are to be made—there shall be due and payable, in lawful money of the United States, the indemnity of .... dollars (less any unpaid balance of the Safety Fund mentioned in said fourth condition, and less any unpaid balance not yet due of

the then current year's payments in case the same are made payable other than annually), to.....
.....
.....
.....
.....
.....
..... legal representatives, or to such other beneficiary as the member shall from time to time designate, with the written consent of the company.

The payments required under this policy for the first seven years shall be charged with two dollars annually (unless sooner commuted), for each $1,000 of insurance, payable into the Safety Fund referred to in condition 6 hereof, with the costs of collection, the due proportion of taxes levied hereon or in connection herewith, the expenses of investigations and adjusting death claims, first year's expenses and with dues proportioned annually at the rate of four dollars for each $1,000 of insurance—which dues shall be for the company's sole use in consideration of its paying all other expenses. From the balance of said payments, after making said charges, shall be paid the actual mortality occurring on policies written upon this form (designated herein as Form 4) during their first seven years; and any excess, as determined by the company, remaining after payment of said mortality, shall be credited as a dividend upon the eighth and following years. If any deficiency shall occur in said portion of the payments applicable to actual mortality, it shall be made up by proportionate contributions from members holding Form 4 policies in the Safety Fund Department whose seven years have not expired, as levied and called

for by the company hereon upon the basis of the rating of this policy in the company's table of mortality rates, at the then age of the member, and shall be payable at the same time and in like manner as other required payments hereon are made.

On the first day of March, June, September and December, in every calendar year, after the expiration of the seventh policy year, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said Safety Fund and dividends from first seven years' payments), such mortality contributions as shall be levied and called hereon by the company upon the rating of this policy in the company's table of mortality rates, at the then respective age of the member according to the ratio which the total like rating of all policies in the same department (after making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the company to be met; and at the same time there shall be due and payable the cost of collecting said contributions, the due proportion of taxes levied hereon or in connection herewith, the expenses of investigations and adjusting death claims and dues proportioned annually at the rate of four dollars for each $1,000 of insurance—which dues shall be for the company's sole use in consideration of its paying all other expenses.

If any payments to be made to the company shall not be paid to it at its home office, on the stipulated day due, all right and liability to make payments shall end, and this contract shall cease and determine, and no person shall be entitled to damages, or recovery of any moneys paid hereon. No act of leniency by the company in respect of any pay-

ment shall serve to waive promptness of any subsequent payment on the stipulated day due.

Special notices (bearing date thirty days in advance of stipulated dates of payment) addressed to the member, or to the person designated by the member, at the last post-office address appearing on the company's books, and mailed at Hartford post-office, postage prepaid, shall be sufficient notice of the amount of any stipulated payment, and the affidavit of the person mailing such notices shall be conclusive proof of the same having been so mailed. Four days grace after the dates fixed herein for payment is allowed, or fourteen days if the designated address is on or west of the meridian of Salt Lake, Utah, or in foreign countries other than Canada. If such special notice be not received it shall nevertheless be a condition precedent to the continuance of this contract that a sum not less than the last prior payment made hereon (exclusive of any reduction by distribution from the Safety Fund) shall be paid upon the stipulated day due at the company's Home Office, and any balance due must be paid within thirty days thereafter. General notice of payments to be made on the stipulated day due is hereby given and accepted for all purposes of this contract. Any notices sent while any payment shall be past due are to be construed only as notices to make application for reinstatement of membership and shall not serve to extend the stipulated day due. Application for reinstatement, in form provided by the company, shall accompany every tender of any past due payment, and such application and tender shall not serve to reinstate membership or continue this contract unless the company shall evidence acceptance thereof

by issuing its receipt therefor within the member's lifetime while in good health.

This policy or certificate of membership is issued in a special department known as the Safety Fund Department, and participates in all benefits of the Trustee's Contract which is printed hereon and referred to and made a part hereof with same effect as if recited in full in this condition. And if any final distribution of said Safety Fund shall be ordered, as provided for therein, said distribution shall be in lieu of payment hereunder, and all liability of the company shall cease in respect of this contract.

Attached to said Exhibit G is a copy of the Trustee's Contract for Safety Fund, Men's Division, dated December 31, 1879, which is the same Trustee's Contract, copy of which is attached to the policy sued on herein (Plaintiff's Exhibit 1).

Q. What is the paper which I now show you? A. That is a copy of the form on which the so-called Form 3½ certificates were issued in the Men's Division of the Safety Fund Department of the company, designated Form 3½ S. F. D. in the lower left-hand corner of the first page.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit H:

EXHIBIT H.

Form 3½.

The substance of this exhibit is as follows:

In Consideration of the agreements contained in the application herefor (hereby made a part of this contract), and of the first payment of

..../100 dollars on delivery hereof and of like payments on or before every ..... day of ..... in each consecutive year until twenty full annual payments have been made,

Does Hereby Promise to pay upon the death of ..... (herein called the insured), of ..... county of ..... and State of....., the sum of ..... dollars, within ninety days from the receipt by the company's president or secretary of satisfactory proofs of the manner and cause of the death of the insured, executed and filled out as required by the forms furnished by the company upon notice to it of said death, together with full report of any inquest, and upon surrender hereof receipted to the company's satisfaction (less any unpaid balance to the Safety Fund and any balance not yet due of the then current policy year's payments, and any outstanding liens hereon), to

.....
.....
.....
.....
.....
.....
.....legal representatives, or to such other beneficiary as the insured shall from time to time designate, with the written consent of the company, subject to the following conditions and those succeeding the signatures hereto:

First.—That this contract shall take effect only when the herein stipulated first payment is made in cash while the insured is alive and in good health, and shall continue in force (except as hereinafter provided) only by payment in cash to the company, on or before the stipulated day due, of

each subsequent payment required hereby. All payments hereunder, by or to the company, shall be at its Home Office, in Hartford, Conn.

Second.—That after twenty years from the date of said policy, if all payments required hereby have been made, the member may have indorsed upon said policy that no further premiums are payable except such payments as may be required for mortality cost and reserve fund in excess of the accumulations thereon, which payments, if any, shall be payable on notice, in cash, or in such equivalent manner as the company may direct.

Third.—That upon surrender of this policy at the end of twenty years, all conditions having been fulfilled, the member may, in lieu of the option given in the second condition hereof, receive the full amount of the unapplied accumulations in cash and discontinue the insurance.

Fourth.—That after two full years' payments have been made hereon, and upon failure to make further payments as hereby required, this policy shall continue in force under the terms prescribed herein until the net balance of said policy's share of said accumulations shall be exhausted by application of the same to current mortality costs, dues as provided for in condition 5, on the second page hereof, and any unpaid balance of the required safety fund payment when said policy shall finally cease and determine without notice.

Fifth.—That by action of the company, in the event of the insufficiency of said net balance to maintain the necessary mortality costs and reserve fund, the said policy may be charged with the deficiency, which shall be payable on notice, in cash, or in such equivalent manner as the company may direct. The company's own apportionment of accumulation, deficiency, mortality cost

and reserve fund for all purposes of this policy shall be conclusive and binding on all parties in interest.

Attached to said exhibit is a table of rules of advance payments required thereunder, which table is as follows:

RATES OF PAYMENTS.

For Form 3½ Policy.

Communted into advance payments for Twenty Years.

For $1,000.

Age	Ann.	Quar.	Age	Ann.	Quar.
20	$25.98	$ 6.84	40	$37.69	$ 9.92
21	26.38	6.94	41	38.60	10.16
22	26.79	7.05	42	39.57	10.41
23	27.21	7.16	43	40.60	10.69
24	27.65	7.28	44	41.67	10.97
25	28.11	7.40	45	42.81	11.27
26	28.58	7.52	46	44.00	11.58
27	29.07	7.65	47	45.25	11.91
28	29.58	7.79	48	46.56	12.25
29	30.11	7.93	49	47.95	12.62
30	30.66	8.07	50	49.41	13.00
31	31.23	8.22	51	50.95	13.41
32	31.83	8.38	52	52.58	13.84
33	32.45	8.54	53	54.31	14.29
34	33.10	8.71	54	56.14	14.78
35	33.77	8.89	55	58.09	15.29
36	34.48	9.08	56	60.17	15.84
37	35.22	9.27	57	62.38	16.42
38	36.00	9.48	58	64.75	17.04
39	36.82	9.69	59	67.29	17.71

There was also attached to said exhibit a copy of the trustee's contract safety fund men's divi-

sion dated 31 Dec., 1879, being the same trustee's contract attached to the policy sued on herein (Plaintiff's Exhibit 1 and Defendant's Exhibit D).

Q. Attached to Exhibit H, being the Form 3½ certificate, is a table of rates which I have had you place on there for convenience. I will get you to state whether or not this table of rates appeared indorsed on this form of certificate? A. It did not.

Q. That is merely to indicate the rates on which this certificate was issued? A. Yes, the rates of deposit that the members were required to pay at the attained ages shown in the table.

Q. Will you please state wherein the Form 3 certificate, being Exhibit F, differed in essentials from the regular Safety Fund certificates, a copy of which is Exhibits D and E; point out in Exhibit F where that difference appears. A. Form 3, which is Exhibit F, differs from the original Safety Fund certificate form only in the table of assessment rates. This table appears on the fourth page of the exhibit. Except as to the table of rates these Form 3 policies were treated and are treated in all respects exactly the same as the original assessment certificates.

Q. The table indorsed on the back of Exhibit F, being Form 3 certificate, is that the old table that was on the original or regular Safety Fund certificates, or is it the new and the higher table that you have referred to? A. It is the new and higher table.

Q. And when did you first begin issuing Form 3 certificates, of which Exhibit D is a copy? A. 1894.

Q. None issued prior to that time? A. None whatever.

Q. I wish you would take Exhibits G and H, being

respectively the form 4 and form 3½ certificates, and point out wherein they differ in essentials from the regular safety fund certificates? A. As far as they affect the safety fund department and the original or regular assessment certificates they differ from the original or regular assessment certificates only in that the new or higher table of rates heretofore referred to is applied to them for the purposes of assessment. The form 4 certificate for the first seven years provided for the payment of a level premium. From these premiums there was deducted the expense dues, two dollars each year, as a deposit to the safety fund, and they further provided that from the balance of the payments should be paid the mortality on form 4 certificates. At the end of seven years the contract provided that these form 4 certificates should be continued in the men's division of the safety fund department of the company by the payment of assessments. It was further provided in the contract that any balance of the payments of these members not applied to the payment of the expense dues, the safety fund deposits, and the mortality, should be applied in the reduction of future assessments on such policies. The form 3½ certificate, Exhibit H, provided that the member or insured should make a fixed deposit in advance each year and that from his payments should be deducted the deposit to the safety fund of $10.00 on each $1,000 of insurance, the expense dues, and other expenses as provided therein, and that the balance of the payments should be accumulated as a fund with the payments of other form 3½ certificate holders, and from this fund should be paid the regular assessments of the safety fund department; these assessments, as before stated, to be based on the new or higher table

of rates. Form 3½ certificates and their effect upon the safety fund department are exactly the same as the form 3 certificates.

Q. You have stated under the form 4 certificate the member was required to make certain stipulated or level premium payments for a period of seven years. What was the amount of the payments so required during this period of seven years as compared with the amounts of assessments in the safety fund department? Were they the same, or higher or lower? A. They were not the same, and though I cannot state definitely, undoubtedly they were higher at the beginning of the period of the seven years and lower at the end.

Q. Now, from the payments made by the members holding form 4 certificates during the seven years that you have indicated, how were they assessed; how did they enter into the safety fund at all? A. They entered into the safety fund department only in that they made deposits to the safety fund, but they did not pay assessments for the mortality of the regular safety fund members, nor were death losses on those certificates included in any assessment upon the regular safety fund member during the term of seven years.

Q. But during that seven years did they pay to the safety fund any amount per thousand, and if so, what amount? A. They did; they paid to the safety fund $2.00 per annum for the term of seven years, making a total of fourteen (14) dollars as their deposit to the safety fund for $1,000 insurance, as compared with the $10 deposit for $1,000 of insurance of the regular safety fund certificate holders.

Q. From what source were the death losses on these

form 4 certificates paid which were incurred during the first seven years? A. The death losses on the form 4 certificates were, in accordance with the terms of the contract, paid from the premiums of the form 4 certificate holders.

Q. And not from the mortuary fund of other funds of the safety fund department? A. Absolutely not; only from the accumulated premiums paid by the form 4 certificate holders during the seven-year term.

Q. Now, at the end of seven years what became of those certificates? A. By their terms they were continued in the safety fund department by the payment of assessments the same as all other members of the safety fund department.

Q. After seven years they were assessed and were no longer level premium policies; they were assessed as all other members of the safety fund department were assessed and at the rate shown by the new or higher table? A. That is right.

Q. Now, with respect to the deposits made in advance by the holders of form 3½ certificates. During the first seven years from what source were the death losses of the holders of that class of policy paid during that time? A. From the mortuary fund of the safety fund department, to which they paid assessments on their certificates; paid from their accumulated deposits.

Q. Does the table attached to form 3½ certificate show the amount which was required quarterly or annually at the several ages therein designated from the holders of form 3½ certificates? A. It does.

Q. State whether the first column shows the age at which the rate shown in the table of payments last referred to is applicable? A. It does.

Q. And state whether the second column is the annual rate and the third column the quarterly rate? A. That is right; it is.

Q. And then the fourth column shows the age and the fifth and sixth columns the annual and quarterly rates? A. That is right.

Q. And the amount of the deposits or payments thus required at the several ages shown in that table—state whether it is the same or higher or lower than the assessments made in the safety fund department at those several ages? A. It is not the same. It was considerably higher at the attained age at the date of issue than the assessment at the same age at that time. The deposits on this form 3½ certificate have always been sufficient to pay their regular assessments to the mortuary fund of the safety fund department, men's division; if they were not the contract provides they should be assessed for any deficiency.

Q. Now, the amount assessed on the form 3½ certificate against the deposits which you have indicated there, was that assessed on the new or higher table or on the old table? A. On the new or higher table?

Q. As a matter of fact has the amount which the members holding form 3½ certificates have paid to the company, been in excess of or below the amount for which those deposits have been assessed? A. It has been in excess.

Q. And that excess of their deposits over the amount which they have been assessed is referred to in your reports and statements as to what? A. In our reports it is included in an item which is designated "Surplus on Stipulated Premium Policies."

Q. In describing and differentiating form 4 certificate from your regular safety fund certificate you have

referred to the provisions of the contract which indicate such differentiation. Won't you please read into the record for convenience in future use that clause of the certificate which indicates that differentiation? A. "4. The payments required under this policy for the first seven years shall be charged with two dollars annually (unless sooner commuted) for each one thousand dollars of insurance, payable into the safety fund referred to in condition 6 hereof, with the costs of collection, the due proportion of taxes levied hereon, or in connection herewith, the expenses of investigations and adjusting death claims, first year's expenses and with dues proportioned annually at the rate of four dollars for each $1,000 of insurance, which dues shall be for the company's sole use in consideration of its paying all other expenses. From the balance of said payments, after making said charges, shall be paid the actual mortality occurring on policies written upon this form (designated herein as form 4) during their first seven years; and any excess, as determined by the company, remaining after payment of said mortality, shall be credited as a dividend upon the eighth and following years. If any deficiency shall occur in said portion of the payments applicable to actual mortality, it shall be made up by proportionate contributions from members holding form 4 policies in the safety fund department whose seven years have not expired, as levied and called for by the company hereon upon the basis of the rating of this policy in the company's table of mortality rates, at the then age of the member, and shall be payable at the same time and in like manner as other required payments are made.

"On the first day of March, June, September and

December, in every calendar year, after the expiration of the seventh policy year, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said safety fund and dividends from first seven years' payments), such mortality contributions as shall be levied and called hereon by the company upon the rating of this policy in the company's table of mortality rates, at the then respective age of the member according to the ratio which the total like rating of all policies in the same department (after making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the company to be met; and at the same time there shall be due and payable the cost of collecting said contributions, the due proportion of taxes levied hereon or in connection herewith, the expenses of investigations and adjusting death claims and dues proportioned annually at the rate of four dollars for each $1,000 of insurance—which dues shall be for the company's sole use in consideration of its paying all other expenses.

"If any payment to be made to the company shall not be paid to it at its home office, on the stipulated day due, all right and liability to make payment shall end, and this contract shall cease and determine, and no person shall be entitled to damages, or recovery of any moneys paid hereon. No act of leniency by the company in respect of any payment shall serve to waive promptness of any subsequent payment on the stipulated day due." And on the first page of the contract the following: "And in further consideration of an advanced payment of.....Dollars to be made at the date hereof, and of like payments to be made on the.....day of.....in

every successive year in the seven years then commencing, and of the subsequent payments to be made as required by the fourth condition hereof."

Q. In referring to some of these policy forms you designate them, do you not, as seven-year certificates? A. That is right, yes; the form 4 certificate we designate as seven-year.

Q. Any other certificates included in the seven-year certificates? A. No.

Q. And why is it that your form 4 certificates are issued as seven-year certificates? A. Because the provisions contained therein provide for level premiums for the first seven years from the date of issue.

Q. Please state whether all the members holding what you have designated as regular safety fund certificates have on each assessment been assessed at the rates indicated by the table which you have designated the old table of rates. A. They have.

Q. And state whether the members holding form 4 and form 3½ certificates, or their deposits made pursuant to the provisions of their certificates, have been assessed always at the rate shown in the new or higher table of rates. A. They have.

Q. Is this a copy of what you have designated as the old table of rates? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit I.

The same being as follows:

EXHIBIT I.

OLD TABLE RATE.

Ages.	Rate.
15–21	$ .65
22	.67
23	.69
24	.71
25	.73
26	.75
27	.77
28	.79
29	.81
30	.83
31	.85
32	.88
33	.91
34	.94
35	.97
36	1.00
37	1.03
38	1.06
39	1.09
40	1.12
41	1.14
42	1.16
43	1.18
44	1.20
45	1.22
46	1.25
47	1.30
48	1.35
49	1.40
50	1.47
51	1.54
52	1.63

Ages.	Rate.
53	1.72
54	1.81
55	1.92
56	2.03
57	2.15
58	2.32
59	2.50
60	2.68
61	2.86
62	3.08
63	3.30
64	3.65
65	4.00

Q. Is that a copy of what you have designated as the new table of rates? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit J.

The same being as follows:

EXHIBIT J.

NEW TABLE RATE.

Ages.	Rate.
15–21	$ .74
22	.75
23	.76
24	.77
25	.78
26	.79
27	.80
28	.81
29	.83
30	.84
31	.86

Ages.	Rate.
32	.87
33	.89
34	.91
35	.93
36	.95
37	.97
38	.99
39	1.01
40	1.04
41	1.06
42	1.09
43	1.13
44	1.17
45	1.22
46	1.28
47	1.35
48	1.43
49	1.51
50	1.59
51	1.69
52	1.79
53	1.91
54	2.03
55	2.17
56	2.31
57	2.47
58	2.64
59	3.03
60	3.47
61	3.94
62	4.43
63	4.96
64	5.56
65	6.24

Q. Please state whether the paper which I now hand

you is a copy of the record of the company consisting of the tabulation or calculation of call 126 as levied against the safety fund members in the men's division. A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit K.

The same being as follows:

EXHIBIT K.

(Page 1)

REGULAR SAFETY FUND POLICIES.

Men's Division—Calculation of Call No. 126.

Age.	Rate.	Amount.	Product.
30	.88	.....	.....
1	.85	.....	.....
2	.88	1,000	.88
3	.91	2,000	1.82
4	.94	5,000	4.70
5	.97	5,000	4.85
6	1.00	25,000	25.00
7	1.03	25,500	26.27
8	1.06	46,000	48.76
9	1.09	66,500	72.49
40	1.12	66,000	73.92
1	1.14	97,500	111.15
2	1.16	135,500	157.18
3	1.18	133,500	157.53
4	1.20	166,000	199.20
5	1.22	232,000	283.04
6	1.25	310,000	387.50
7	1.30	348,000	452.40
8	1.35	462,500	624.38
9	1.40	466,000	652.40
50	1.47	531,000	780.57
1	1.54	719,000	1,107.26

Age.	Rate.	Amount.	Product.
2	1.63	745,000	1,214.35
3	1.72	669,500	1,151.54
4	1.81	799,000	1,446.19
5	1.92	891,500	1,711.68
6	2.03	871,500	1,769.15
7	2.15	929,000	1,997.35
8	2.32	969,500	2,249.24
9	2.50	1,009,500	2,523.75
60	2.68	945,000	2,532.60
1	2.86	952,600	2,724.44
2	3.08	889,500	2,739.66
3	3.30	775,500	2,559.15
4	3.65	853,500	3,115.28
5	4.00	839,500	3,358.00
6	4.00	777,500	3,000.00
7	4.00	665,000	2,660.00
8	4.00	816,500	3,266.00
9	4.00	690,600	2,762.40
70	4.00	553,500	2,214.00
1	4.00	574,000	2,296.00
2	4.00	463,500	1,854.00
3	4.00	554,000	2,216.00
4	4.00	467,500	1,870.00
5	4.00	437,500	1,750.00
6	4.00	371,500	1,486.00
7	4.00	368,000	1,472.00
8	4.00	249,500	998.00
9	4.00	306,000	1,224.00
80	4.00	193,000	772.00
1	4.00	156,500	626.00
2	4.00	116,000	464.00
3	4.00	83,000	332.00
4	4.00	61,000	244.00
5	.00	51,000	204.00
6	4.00	20,000	80.00
7	4.00	12,000	48.00

Age.	Rate.	Amount.	Product.
8	4.00	9,000	36.00
9	4.00	2,000	8.00
90	4.00	3,000	12.00
96	....	.....	.....
		23,984,200	68,158.02

(Page 2)

Form 3, Men's Division.

Age.	Rate.	Amount.	Product.
30	.84	.....	.....
1	.86	.....	.....
2	.87	.....	.....
3	.89	3,000	2.67
4	.91	2,000	1.82
5	.93	1,000	.93
6	.95	2,000	1.90
7	.97	3,000	2.91
8	.99	5,000	4.95
9	1.01	7,000	7.07
40	1.04	2,000	2.08
1	1.06	8,000	8.48
2	1.09	17,000	18.53
3	1.13	6,000	6.78
4	1.17	6,000	7.12
5	1.22.	8,000	9.76
6	1.28	8,000	10.24
7	1.35	8,000	10.80
8	1.43	14,000	20.02
9	1.51	20,500	30.96
50	1.59	12,000	19.08
1	1.69	14,500	24.51
2	1.79	15,000	26.85
3	1.91	21,500	41.07
4	2.03	6,000	12.18

Age.	Rate.	Amount.	Product.
5	2.17	12,000	26.04
6	2.31	11,500	26.57
7	2.47	16,500	40.76
8	2.64	13,000	34.32
9	3.03	25,000	75.75
60	3.47	8,000	27.76
1	3.94	11,000	43.34
2	4.43	24,500	108.54
3	4.96	11,000	54.56
4	5.56	15,500	86.18
5	6.24	10,000	62.40
6	6.24	6,000	37.44
7	6.24	6,000	37.44
8	6.24	9,000	56.16
9	6.24	6,000	37.44
70	6.24	4,000	24.96
1	6.24	2,000	12.48
2	6.24	5,000	31.20
3	....	.....	.....
4	6.24	3,000	18.72
5	....	.....	.....
6	....	.....	.....
7	....	.....	.....
8	....	.....	.....
9	....	.....	.....
80	....	.....	.....
		388,500	1,112.77

(Page 3)

Form 4, Men's Division.

Age.	Rate.	Amount.	Product.
30	.84	.....	.....
1	.86	1,000	.86
2	.87	7,500	6.53

Age.	Rate.	Amount.	Product.
3	.89	11,500	10.24
4	.91	16,000	14.56
5	.93	23,000	21.39
6	.95	17,000	16.15
7	.97	28,500	27.65
8	.99	50,000	49.50
9	1.01	45,500	45.96
40	1.04	64,000	66.56
1	1.06	60,500	64.13
2	1.09	99,000	107.91
3	1.13	91,500	103.40
4	1.17	111,500	130.46
5	1.22	102,500	125.05
6	1.28	123,000	157.44
7	1.35	115,000	155.25
8	1.43	130,000	185.90
9	1.51	138,500	209.14
50	1.59	154,500	245.66
1	1.69	180,500	305.05
2	1.79	212,000	379.48
3	1.91	164,000	313.24
4	2.03	236,750	480.60
5	2.17	137,500	298.38
6	2.31	121,000	279.51
7	2.47	161,000	397.67
8	2.64	157,500	415.80
9	3.03	140,500	425.72
60	3.47	126,500	438.96
1	3.94	120,500	474.77
2	4.43	109,500	485.09
3	4.96	65,500	324.88
4	5.56	109,000	606.04
5	6.24	75,000	468.00
6	6.24	58,000	361.92
7	6.24	48,750	304.20
8	6.24	32,500	202.80

Age.	Rate.	Amount.	Product.
9	6.24	35,500	221.52
70	6.24	21,000	131.04
1	6.24	26,500	165.36
2	6.24	14,500	90.48
3	6.24	7,000	43.68
4	6.24	5,000	31.20
5	6.24	2,000	12.48
6	....	.....	.....
7	....	.....	.....
8	....	.....	.....
9	....	.....	.....
80	....	.....	.....
		3,757,500	9,401.61

Form 3½, Men's Division.

Age.	Rate.	Amount.	Product.
30	.84	.....	.....
1	.86	.....	.....
2	.87	1,000	.87
3	.89	.....	.....
4	.91	3,000	2.73
5	.93	3,000	2.79
6	.95	3,000	2.85
7	.97	1,000	.97
8	.99	1,000	.99
9	1.01	1,000	1.01
40	1.04	.....	.....
1	1.06	1,000	1.06
2	1.09	1,000	1.09
3	1.13	.....	.....
4	1.17	2,000	2.34
5	1.22	.....	.....
6	1.28	2,000	2.56
7	1.35	3,000	4.05

Age.	Rate.	Amount.	Product.
8	1.43	.....	.....
9	1.51	1,000	1.51
50	1.59	1,000	1.59
1	1.69	.....	.....
2	1.79	2,000	3.58
3	1.91	.....	.....
4	2.03	.....	.....
5	2.17	.....	.....
6	2.31	.....	.....
7	2.47	.....	.....
8	2.64	.....	.....
9	3.03	1,000	3.03
		27,000	33.02

Assessment		$68,158.02
Form 3		1,112.77
Form 4		9,401.61
Form 3½		33.02
Total		$78,705.42
Terminated	2.47%	1,944.02
Product		$76,761.40
Amount	$322,378.48	
Ratio		4.20

Q. This exhibit, Mr. Lawrence, consists of four pages, and the figures appearing on page 1 of Exhibit K correspond with the figures appearing on page 1 of the record which you now have before you, should they not? A. They do.

Q. What is the first column? A. The first column shows the ages at which there are members living whose certificates are in force in the safety fund department.

Q. And the second column shows what? A. The second column is the table of rates for the attained ages.

Q. And the third column shows what? A. The third column shows the amounts of insurance in force at the various ages.

Q. And the fourth column shows what? A. The fourth column shows the product resulting from multiplying the table rates at the corresponding age by the number of thousands of insurance outstanding at that age.

Q. On what call? A. On call 126.

Q. On this first page I see that opposite the ages 30 and 31 you have the rate .83 and .85, but under the word "amount", meaning, as you have testified, the amount of insurance in force, there is nothing enumerated. Why is nothing enumerated in that column opposite ages 30 and 31? A. Because on December 31, 1909, the date with which that record deals, there was no insurance in force at those two ages.

Q. And at age 32, following the rate .88, you have inserted the amount 1,000, which indicates what with regard to the amount of insurance in force? A. It indicates that on December 31st, 1909, there was $1,000 of insurance in force on a member whose attained age was 32 years.

Q. And so on throughout the exhibit, wherever there is any amount inserted opposite a particular age, that indicates the amount of insurance in force at that age on that date? A. It does.

Q. And with respect to age 32 you would take the rate .88 and multiply by 1,000, which gives you the product in the last column, which is .88 multiplied by 1, or .88, and it gives you the amount to be realized from an assessment of one table rate on a member of

that age? A. Yes, and it also gives the amount realized by the assessment of one table rate upon the amount of insurance outstanding at that time at that age.

Q. So when we get to age 50, where the rate is 1.47, the figures 531,000 indicate the amount of insurance at that age, and the result of product, 780.57, is the result of multiplying 531,000 by 1.47? A. That is right.

Q. The rate 1.47 being the rate by the table at age 50 for each $1,000 of insurance? A. That is right.

Q. Now, page 2 of Exhibit K is a copy of page 2 of the record which is now before you, is it not? A. It is.

Q. The total of the products of the calculation as shown on page 1 of Exhibit K, being the fourth column of the first page, is 68,158 and is the sum of the assessments of one rate against all of the insurance in force on December 31st, 1909, in the safety fund department, men's division, holding regular safety fund policies, is it not? A. Yes, it is the amount which would be raised by the assessment of one table rate upon all of the members whose certificates are in force in the men's division of the safety fund department holding the original or regular safety fund certificates of one table rate at their attained ages.

Q. Now, is page 2 of Exhibit K a copy in the same way of page 2 of the record which you now have before you? A. Yes.

Q. And the first column of page 2 of Exhibit K likewise refers to ages, the second column to the rate which is applicable at those ages, the third column to the amount of insurance in force and the fourth column is the result of multiplying the amount of insurance in force per thousand by the rate per thousand

given in the second column? A. Yes, that is true; this page refers especially to the form 3 policy.

Q. And why is it that you calculate the amount which would be assessed on the form 3 certificates in a different calculation from the amount that would be assessed on the holders of regular safety fund certificates? A. Because of the fact that we assessed on a different table of rates, being the new or higher table heretofore referred to.

Q. Whereas the rates shown on the first page against the regular safety fund certificates was at the lower or older rates? A. That is right.

Q. And the sum of the products of the fourth column, to-wit, 1,112.77, is the aggregate of an assessment of one rate by the higher table against the members of the safety fund department holding form 3 certificates whose insurance was in force on December 31st, 1909; is that correct? A. At their attained ages, yes.

Q. Page 3 of Exhibit K is likewise a copy of page 3 of the record which is now before you; is that correct? A. It is.

Q. Made up in the same manner? A. Made up in the same manner and showing the form 4 policies.

Q. And in the same way column 3 of page 4 shows the amount of insurance in force December 31, 1909, in the safety fund department where the members hold the form 4 certificates? A. That is right.

Q. And the sum of the products, being the total of the fourth column, shows the amount that would be realized from an assessment of one rate against the members in the safety fund department who held form 4 certificates on that date at their attained ages? A. Yes.

Q. And page 4 of Exhibit K is likewise a copy of page 4 of the record which is now before you? A. It is.

Q. And the total of column 3 shows the amount of insurance in force in the safety fund department of the men's division of those holding form 3½ certificates on December 31st, 1909, does it not? A. It does.

Q. And the sum of the products shown on that fourth page of Exhibit K, to-wit, 33.02, shows the total amount that would be levied as the assessment of one rate against the members holding form 3½ certificates at their attained ages? A. Yes.

Q. In making this calculation on page 1, which relates to the regular safety fund members, you have used opposite each age the rate shown by what table of rates? A. The rates shown in the original or lower table of rates.

Q. And in the calculation as shown on pages 3, 4 and 5 you have used the rates shown in what table of rates? A. The new or higher table of rates.

Q. And now, at the bottom of page 4 are figures which sum up the total shown on pages 1, 2, 3 and 4, to-wit, the figures 68,158.02, appearing on page 1 of the exhibit; 1,112.77, which is the total which appears on page 2 of the exhibit; 9,401.61, which is the total which appears on page 3 of the exhibit, and 33.02, which is the total which appears on page 4 of the exhibit, and the aggregate of this total makes an aggregate total of 78,705.42; and what is that amount which you have designated there opposite the word "total"? A. That is the amount that would be raised by an assessment of one rate on all of the certificates in force in the men's division of the safety fund department

December 31st, 1909, at their attained ages, applying to the certificates the tables applicable thereto.

Q. Beneath the figures 78,705.42 appears this line, "Terminated, 2.47%, 1,944.02", immediately under and deducted from the total of 78,705.42. What does that indicate and pursuant to what provision of the policies sued on was that deduction made? A. That is the allowance for discontinuance of membership or lapse. The contract provides on the first page as follows: "and of the further payment of all mortality calls proportioned to the said indemnity levied against the herein named member to form a mortuary fund for the payment of all indemnity matured by deaths of members and to create a safety fund, as hereinafter described, which mortality calls, to be levied upon all the members in the department wherein this certificate is issued whose certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity at the dates of such deaths, with due allowance for discontinuance of membership." By this clause of the contract the company is required to make an allowance for discontinuance of membership and the officers of the company in calculating the assessment No. 126 estimated that the lapse or discontinuance of membership rate would be 2.47 per cent; therefore, the amount that would be raised by the assessment of one rate upon all the members in force at their attained ages was reduced by 2.47 per cent of that amount, leaving a balance of 76,761.40.

Q. Which is the aggregate of an assessment of one rate against all of the members, according to the table of rates applicable to their policies, reduced by an

assumption of lapse equal to 2.47 per cent of the entire membership? A. That is right.

Q. Why is it essential, regardless of the terms of the contract, to assume a lapse or discontinuance of membership? A. Because on every call there are always lapses, and if we made our calculations without taking that into account we would not raise the amount for which we assess, which is the amount necessary to pay the death losses and is the amount of the death losses incurred.

Q. By lapse you mean persons who terminate the insurance or membership? A. Either by death or lapse. It is a rate of termination; all terminations are included.

Q. Includes all terminations, whether resulting from death or failure to pay assessments? A. Yes.

Q. Your assessment of mortality call 126 was based upon an aggregate of how many deaths, and by how many deaths I mean how much insurance? A. $322,378.48.

Q. And by that assessment you undertook to raise how much money? A. $322,378.48.

Q. An assessment of one rate, as you have heretofore described, assuming the rate of lapse at 2.47 per cent on all of the members in the men's division of the safety fund department would realize, as you have testified, $76,761.40. Now, how many times was it necessary to multiply the net amount of an assessment of one rate, to-wit, $76,761.40, in order to realize, if paid, the sum of $322,378.48? A. 4.20 times, which is found by dividing $322,378.48, the amount to be raised, by $76,761.40, the amount that would be raised by the assessment of one table rate, making due allowance for discontinuance of membership.

Q. And $76,761.40 divided into $322,378.48 gives you a product of 4.20, does it not? A. Approximately, yes.

Q. Well, what is the exact result of such division? A. The exact result is 4.1997.

Q. And that product you have designated on the tabulation before you as the ratio, have you not? A. I have.

Q. And that means what with regard to the assessment of the members of that class? A. That means that each member must pay 4.20 times his table rate at his attained age per $1,000 of insurance to pay his share of that assessment.

Q. And was each member of the men's division of the safety fund department assessed 4.20 times one rate, as shown by his assessment, at his attained age on call 126? A. He was.

Q. Now, you have stated that the lapse rate allowed, being the lapse rate for assumed discontinuance of membership, was (p. 24) 2.47 per cent; that was the lapse rate which was assumed for the purpose of this assessment by you and your associate officers levying the assessment? A. It was.

Q. Do you know what the actual lapse rate was on the previous call, 125? A. Yes, it was 2.47 per cent.

Q. That is to say, 2.47 per cent of your membership actually terminated their insurance in the safety fund department, men's division, on call 125? A. That is right.

Q. So in assuming what the lapse rate would be on call 126 you took what was the actual lapse rate on call 125? A. That is right.

Q. The tabulation concerning which you have testified, being Exhibit K, was made up on the data or

condition of the safety fund department as of what date? A. As of December 31st, 1909.

Q. What was the date of call 126? A. It was due on March 1st, 1910. It was levied and notices were dated January 29, 1910.

Q. Why was it that you made up your assessment of mortality call 126 on the condition of the company as it existed December 31st, 1909, when the date of the call 126 was January 29th, or twenty-nine days later? A. Because it requires that length of time to calculate the assessment, to lay the assessment, as we call it, against each individual member; that is, to calculate each individual member's assessment on the certificate registers and to prepare the notices of the assessment which are to be sent to each individual member. We start to calculate the call which is made up as of January 29th and will be due March 1st, thirty days later than it is dated, immediately after the 31st of December, and therefore must calculate it as of conditions at that date.

Q. The amount of insurance in force at the different ages in the safety fund department and among the holders of the different forms of certificate in that department varies with each assessment call, does it not? A. It does.

Q. And consequently you have got to calculate anew on each call the amount of insurance in force at each age? A. We do.

Q. And you do it by what process? How do you arrive at the amount of insurance in force at any particular time? A. We have the insurance in force listed at the various attained ages, as shown in Exhibit K, and the lapses at each age on each call are deducted from the amounts of insurance at those ages and the

amount left in force at each age is extended, showing the amount that is in force at the time of the next call, and so make our calculation.

Q. Then, having ascertained the amount of insurance in force at each age, you proceed with the calculation as shown by Exhibit K? A. Yes.

Q. And then when that is done and you have worked out the calculations shown at the end of page 4 of Exhibit K, you then have to do what in respect to notifying the members as to the actual amount of their assessment? A. We first have to find how much each member will pay by multiplying the rate at his attained age and number of 1,000 of insurance by the ratio, and having found that, that amount is entered on the notice, as well as the dues and any other payments that he has to make.

Q. And is a separate notice prepared for each member? A. Yes, for each member.

Q. And how many members had you in this department in January, 1910, approximately? A. About 11,000, I should say.

Q. And is a record kept of the amount of each assessment as against each member, and does that record have to be made up between the time that you start the calculations, January 1st, 1910, and January 29th, when the notice goes out? A. Yes.

Q. And the notice to each member has to be made up at the same time and addressed and stamped and put in post office? A. Yes.

Q. And that process of calculating and preparing the notice of the assessment and mailing takes up approximately how much time? A. Approximately one month.

Q. How often and as of what dates are assessments levied in the association of the safety fund depart-

ment? A. They are levied quarterly and are due the first days of the month of March, June, September and December and the notices are mailed thirty days prior to those dates.

Q. Will you please state the amount of death claims incurred of which you had received notice of death which had not previously been assessed for on December 31st, 1909? A. $463,500.

Q. What were your death losses in January, 1910? A. $120,000.

Q. And what had been your average monthly death losses during 1909? A. $100,000 to $115,000.

Q. And what were they during 1910? A. About the same, I think. I think during 1910 they were more than they were during 1909.

Q. For those death losses you determined on call 126 to assess for a total of $322,378.48? A. We did.

Q. And call 126 was based upon that aggregate of death losses? A. It was.

Q. Now, then, will you please explain how you apportioned to Frank Barber his part of this call 126, or his proportion of the total then assessed for, first with respect to policy 128293 for $1,000 and next with respect to policy 174416 for $2,000? A. The amount of the assessment on certificate 128293 due March 1st, 1910, on the life of Frank Barber was computed by multiplying the rate at his attained age, as illustrated in the table on the back of the certificate, by the ratio of 4.20. The certificate was issued the 14th day of February, 1890, at which time the age of his last birthday was 32, which was his insuring age; therefore, at the computation of call 126 the attained age was 51 years. On the table on the back of the certificate the rate given for age 51 is 2.31. In the consideration

clause on the first page of the certificate is the following in parentheses: "one-third of the proceeds of such mortality calls to be applied towards said safety fund until the sum of ten dollars on each $1,000 indemnity aforesaid shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon." On certificate 128293 Frank Barber completed his safety fund deposit on the 20th day of November, 1891; therefore, in computing the assessment against this certificate on the call due March 1st, 1910, the table rate at age 51, 2.31, is reduced one-third, or we take two-thirds of 2.31, which is 1.54. Multiplying this by the ratio, which is 4.20, we get the result of 6.47, the amount of the assessment for mortality against this certificate on the call due March 1st, 1910.

Q. Being the rate for $1,000 of insurance? A. Being the rate for $1,000 of insurance, which is the amount of certificate 128293. The assessment due March 1st on certificate 174416 on the life of Frank Barber was computed in the same manner, except that the certificate, being for $2,000, the rate of 1.54 is multiplied by 2, giving 3.08 as the rate on $2,000 of insurance; this multiplied by the ratio, 4.20, gives the amount of the assessment for mortality on this certificate of $12.94.

Q. Then, this rate of 2.31 you divided by 3 because of that provision of the policy found on the first page which recites that after he has completed his payments to the safety fund he shall only be assessed at two thirds of the rate given in the table endorsed on the policy? A. That is right; of $10.00 per thousand.

Q. And when did Frank Barber complete his payment to the safety fund on each of these policies? A. On No. 128293 he completed it on the 20th day of No-

vember, 1891; on certificate 174416 he completed it on the second day of September, 1895.

Q. And two-thirds of the table rate shown for age 51 on the back of policy makes the rate of 1.54? A. It does.

Q. And that you multiply by the ratio of 4.20, which is the ascertained ratio, being the last figure on the bottom of Exhibit K? A. That is right.

Q. Which gives you a total per thousand of 6.47 for mortuary purposes? A. That is right.

Q. That is the rate which you assessed on certificate 128293 because that certificate was for the sum of $1,000 only? A. That is right.

Q. And you assessed twice that amount for mortality purposes on certificate 174416 because that certificate was for $2,000? A. Yes, we assessed at twice the table rate of 1.54.

Q. The rates in the table being the rates for $1,000 of insurance? A. That is right.

Q. Now, was notice of this mortality call 126 sent to Frank Barber on January 29, 1909? A. It was.

Q. Was that notice partly in print and partly in writing? A. It was.

Q. And was the printed part of the notice sent to each member of the safety fund department the same? A. It was.

Q. And is the paper which I now show you and which I will have marked Exhibit L, that part of the notice which is in print and not in writing, a copy of the notice which was sent to all of the members in so far as the notice consisted only of printed matter? A. It is.

Q. And with respect to each member what was inserted in each notice in writing? A. The name of the

member, the address, street, city and state, the amount of the tax which the company would be required to pay by the laws of the state in which the member lived if the assessment was paid, the number of the certificate, the amount of insurance, the amount assessed for mortality, the amount of quarterly dues, the total of the dues, the dividend credit and the amount that the member will be required to pay after deducting the dividend.

Q. What was the address of Frank Barber as it appeared on the books of your company at the time that mortuary call was sent out on January 29th, 1909?

Mr. Morrow: I object to that as hearsay and not the best evidence.

Objection overruled by the Court.

Plaintiff excepted at the time.

A. 4201 Pleasant street.

Q. What city and State?

Mr. Morrow: I object to that as hearsay and not the best evidence.

Objection overruled by the Court.

Plaintiff excepted at the time.

A. St. Louis, Missouri.

Q. Is this a copy of the notice of date January 29, 1910, which has on the margin of it "Special notice of quarterly call No. 126", which was sent to Frank Barber on January 29, 1910? A. It is.

Q. How was it sent? A. In an envelope with a list of the deaths which were included in call 126, a return envelope addressed to the Hartford Life Insurance Company, another envelope addressed to Frank Barber at 4201 Pleasant street, St. Louis Mo., in which the receipt was to be mailed him if he made the payment,

and a two-cent stamp placed on the envelope in which the papers were placed.

Q. Then what was done? A. It was taken to the post office, Hartford, Connecticut, and mailed on the 29th day of January, 1910.

The defendant offers papers referred to in evidence, which is hereto attached and marked Defendant's Exhibit M.

The plaintiff objects to the offering of this paper in evidence because it is a copy of an original paper not produced nor accounted for, and that is the best evidence.

Objection overruled by the Court.

Plaintiff excepted at the time.

Which said Exhibit M is as follows:

EXHIBIT M.

HARTFORD LIFE INSURANCE COMPANY,
Hartford, Con., January 29th, 1910.
Special Notice of Quarterly Call No. 126.

Your next Quarterly Call will fall due and be payable June 1, 1910.

Frank Barber
4201 Pleasant St., 15
St. Louis, Mo.

2—174416

This Call which will be due Mar. 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list), Benefits, $322,378.48 and expenses on your policy, as follows:

For Mortality Call	$13.09
For Quarterly Dues to June next	1.50
Credit	$14.59
Dividend to be applied if payment be made	1.40
Amount Due	$13.19

Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to

Hartford Life Insurance Company.

Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

See over for Special Notice.

SPECIAL NOTICE.

If the payment of the above Quarterly Call is not received at this office on or before *Mar. 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policy-holder by registered letter, giving until *Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Mar. 5, 1910, will be obliged to pay this fifty cents fee in order to have the policy unconditionally reinstated.

After *Mar. 20, 1910, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of reinstatement.

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*If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

Q. You have testified that the amount of call 126 ap-

portioned to Frank L. Barber and chargeable against him per thousand of insurance for mortality purposes was $6.47. In the notice, Exhibit L, the amount demanded of him for mortality purposes on call 126 is $6.54, being a difference of seven cents, and at the top of the notice are the figures "07". Will you explain the significance of the figures 07 and the difference between the amount $6.54 as contained in the notice and $6.47 which you say was assessed against him for mortality purposes? A. The statutes of the State of Missouri require that we would pay a tax of seven cents if that assessment was paid, the amount of seven cents; therefore, in accordance with the terms of the contract, was added to the assessment for mortality, $6.47, making a total mortality call of $6.54.

Q. And that was added pursuant to what provision of the contract? A. The following condition in paragraph 2, entitled "Of Payments", appearing on the second page of certificate 128293, Exhibit D: "But if the laws of any country, State, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax." And the following condition appearing in certificate 174416, Exhibit E, on the second page, paragraph 2, entitled "Of Payments": "But if the laws of any country, State, county or municipality shall require a tax to be paid by said company on account of such payment, then the mortality calls hereon shall be determined so as to cover such tax."

Q. Did the State of Missouri exact and did you regularly pay to the State of Missouri a tax on the assessments collected from members of your safety fund department? A. They did and we paid the taxes.

Q. Was a similar notice, but for a differing amount, prepared and sent to Frank Barber for his policy 174416? A. There was.

Q. Is this paper which I now hand you and which will be marked Exhibit M a copy of such notice? A. It is.

Q. That notice was sent on what date? A. On the 29th day of January, 1910.

Q. What was the address of Frank Barber as it then appeared on the books of your company? A. 4201 Pleasant street, St. Louis, Missouri.

Q. And the amount of his insurance under policy 174416 was how much? A. $2,000.

Q. And the amount of his assessment on that $2,000 for mortality purpose was twice $6.47, was it not? A. $12.94.

Q. And at the top of that notice are the figures "15" and the amount assessed on that notice for mortality call is $13.09. Will you please explain the significance of the "15" and the difference between the amount $13.09 which was charged by the call for mortality purposes and the $12.94 which you say was assessment as calculated by you? A. The 15 cents appearing on the call is the amount of the tax which we would have been required to pay by the statutes of the State of Missouri, due the State of Missouri, provided the assessment had been paid, and the difference between the amount of assessment for mortality, $12.94, and $13.09,

the amount of the mortality call, is this tax of 15 cents, which is added to the amount assessed for mortality in accordance with the terms of the contract quoted above.

Q. What became of the original of the notice to Frank Barber on call 126 levied against his policy 174416, being Exhibit M, about which you are now testifying, after it was prepared? A. It was placed in an envelope addressed to Frank Barber at 4201 Pleasant street, St. Louis, Missouri, accompanied by a list of deaths included in call 126, an envelope addressed to the Hartford Life Insurance Company, in which the payment could be mailed to the company if made, and another envelope addressed to Frank Barber at the address above given in which the receipt would be sent to him in case he made the payment. A 2-cent stamp was placed on the envelope and it was deposited in the post office at Hartford, Connecticut, on the 29th day of January, 1910.

Q. Now, has the company ever received back the original of either of those notices? A. It has not.

Q. And they are not in its possession? A. They are not.

Q. And the last time that the company had either Exhibit L or Exhibit M was when it deposited them in the mail addressed to Frank Barber of St. Louis, as you have testified? A. That is true.

Q. You have said that a list of the deaths included in call 126 was enclosed with each of the notices sent to Frank Barber on each of those policies for call 126. Was that list of deaths in print? A. Yes.

Q. And is this one the retained printed copies of that list which was enclosed with each of those notices? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit N.

Which is as follows:

(See same attached hereto opposite this page.)

Q. In your calculation on policy 128293 you took as your initial figure the rate opposite age 51 and divided that by 3—got two-thirds of that amount, which was 1.54, which you multiplied by the ratio 4.20. In your calculation in respect to policy 174416 you took as your initial figure the rate shown on the back of that policy opposite age 50, to-wit, rate 1.54, and multiply that by the ratio 4.20 without first dividing it by 3. Will you please state why it was that you, in making the calculation, divided one rate, as shown on the back of the table, by 3 and in the other case you did not divide the rate by 3? A. Because in the case of certificate 128293, as I have before explained, the ten-dollar deposit to the safety fund was paid from the assessment for mortality.

Q. Pursuant to what provision? A. Pursuant to the following clause of the contract, which reads: "One-third of the proceeds of such mortality calls to be applied toward said safety fund until the sum of ten dollars on each $1,000 of indemnity aforesaid shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon." The table rate on this certificate was calculated to cover the deposit to the safety fund, and after the deposit was completed only two-thirds of the table rate was used in determining the mortality calls. There was no such provision in certificate 174416, this certificate requiring the payment on the safety fund

EXHIBIT N.

THE HARTFORD LIFE INSURANCE COMPANY.

The following members having died, the claims of their beneficiaries are included in the regular Quarterly Call No. 126, notice of which accompanies this list.

Members.	Location	Date of Death.	Amt. Ins.
Austin, Moses S.	Bridgeport, Conn.	Feb. 13, 1907	$ 3,000
Saunders, Benj. F.	Salt Lake City, Utah.	July 26, 1909	10,000
Dye, Otis M.	Springfield, So. D.	Aug. 18, 1909	10,000
Barnes, K. H.	Stowe, Vt.	Aug. 19, 1909	1,000
Smith, M. W.	Montclair, N. J.	Aug. 20, 1909	1,000
Divine, John F.	Wilmington, N. C.	Aug. 21, 1909	5,000
Loveridge, Royal I.	Bridgeport, Conn.	Aug. 22, 1909	1,000
Morgan, Chas. H.	Lake City, Ia.	Aug. 22, 1909	2,000
Routzahn, D. C.	Virden, Ill.	Aug. 22, 1909	2,000
Lagare, Thos. K.	Atlanta, Ga.	Aug. 22, 1909	3,000
Black, Sam'l McC.	St. John, N. B.	Aug. 23, 1909	2,000
Wood, H. D.	Pinehurst, Ga.	Aug. 23, 1909	1,000
Crawley, F. D.	London, England	Aug. 28, 1909	1,000
Nolting, C. H.	Indianapolis, Ind.	Aug. 30, 1909	1,000
Davey, Thos. H.	Dover, N. J.	Aug. 30, 1909	1,000
Zech, John.	Newport, Ky.	Sept. 1, 1909	2,000
Calvin, T. F.	Joplin, Mo.	Sept. 1, 1909	1,000
Cohen, Leopold H.	New York, N. Y.	Sept. 3, 1909	8,000
Sweeney, Patrick	Cleveland, Ohio	Sept. 3, 1909	1,000
Creighton, Jas. A.	Ennis, Texas.	Sept. 3, 1909	2,000
Berkele, Henry	New York, N. Y.	Sept. 4, 1909	2,500
Bisping, Fred.	Chicago, Ill.	Sept. 4, 1909	1,000
Jarrett, Henry D.	Springfield, Mo.	Sept. 4, 1909	2,000
Pickett, B. F.	Waterbury, Vt.	Sept. 5, 1909	1,000
Abler, Simon.	Akron, Ohio.	Sept. 6, 1909	1,000
Stevens, Chas. E.	Rutland, Vt.	Sept. 6, 1909	4,000
Strong, C. H.	Sterling, Kans.	Sept. 6, 1909	2,000
McCabe, Wm. L.	Lawrence, Mass.	Sept. 7, 1909	1,000
Green, C. J.	Dallas, Texas.	Sept. 7, 1909	5,000
Patton, John M.	Olympia, Wash.	Sept. 7, 1909	2,000
Albritton, A. A.	Kinston, N. C.	Sept. 8, 1909	1,000
Myers, Jacob A. D.	Max Meadows, Va.	Sept. 9, 1909	2,000
Lester, W. A.	Mankato, Minn.	Sept. 10, 1900	1,000
Bezanson, Wm. H.	Somerville, Mass.	Sept. 11, 1909	2,000
Neubecker, Alex.	Cleveland, Ohio.	Sept. 11, 1909	2,000
Berggren, Emil.	Malden, Mass.	Sept. 12, 1909	1,000
Sandhoff, Henry.	Cleveland, Ohio.	Sept. 13, 1909	1,000
Eaton, Albert C.	Stafford Spgs., Conn.	Sept. 13, 1909	1,000
Wallace, Hawson H.	Amarillo, Texas.	Sept. 13, 1909	6,000
Eppel, Adam.	Philadelphia, Pa.	Sept. 15, 1909	1,000
Love, Lucien.	Coleman, Texas.	Sept. 16, 1909	2,000
Rielley, Jas. P.	Cleveland, Ohio.	Sept. 16, 1909	1,000
King, Wm. H.	Attleboro, Mass.	Sept. 17, 1909	1,000
Meinhard, Isaac.	New York, N. Y.	Sept. 18, 1909	10,000
Marsh, Cyrus C.	Union City, Pa.	Sept. 19, 1909	4,000
Bright, Wm.	St. Louis, Mo.	Sept. 19, 1909	5,000
Botsford, Alfred M.	Bridgeport, Conn.	Sept. 20, 1909	1,000
Bunn, James B.	Hamburg, Ark.	Sept. 20, 1909	1,000
Raymond, Lewis.	Waterbury, Conn.	Sept. 22, 1909	2,000
Fahey, Patrick.	Wallingford, Conn.	Sept. 22, 1909	2,000
Allen, Wm. J.	Dallas, Texas.	Sept. 22, 1909	3,000
Hasler, Bernard.	Taftville, Conn.	Sept. 23, 1909	500
Jones, Albert F.	Hartford, Conn.	Sept. 23, 1909	1,000
Harrison, Moses C.	Fredericton, N. B.	Sept. 23, 1909	2,000
Houghton, Edw. T.	Springfield, Mass.	Sept. 23, 1909	2,000
Wasem, Jacob.	Shrewsbury, Mo.	Sept. 24, 1909	2,000
Becker, Fred'k A.	St. Louis, Mo.	Sept. 26, 1909	2,000
Moodie, R. B.	Dayton, Ohio.	Sept. 28, 1909	2,000
Van Vechter, Giles F.	Cedar Rapids, Ia.	Sept. 29, 1909	5,000
White, C. I.	Cresco, Iowa.	Sept. 30, 1909	2,000
Allen, G. H.	Claude, Texas.	Sept. 30, 1909	2,000
Cavagna, Peter.	Cincinnati, Ohio.	Oct. 1, 1909	5,000
Nichols, Jerome B.	Plantsville, Conn.	Oct. 1, 1909	2,000
Barton, Jr., H. A.	Dalton, Mass.	Oct. 1, 1909	2,000
Loux, John.	Lorain, Ohio.	Oct. 3, 1909	2,000
McLaughlin, David.	LaFayette, Ind.	Oct. 3, 1909	4,000
Roberts, Edw. L.	Broadford, Va.	Oct. 3, 1909	878.48
Graf, Louis.	Brooklyn, N. Y.	Oct. 4, 1909	5,000
Perkins, Wm. T.	Orange, N. J.	Oct. 4, 1909	1,000
Pfeuffer, Geo.	Elizabeth, N. J.	Oct. 4, 1909	1,000
McPheeters, Thomas.	St. Louis, Mo.	Oct. 5, 1909	3,000
Colbert, John.	Portland, Conn.	Oct. 6, 1909	1,000
Chambers, Alfred E.	Petersburg, Ky.	Oct. 7, 1909	5,000
Hull, P. H.	Hartford, Conn.	Oct 8, 1909	1,000
Leggett, Wm. T.	Pittsburg, Pa.	Oct. 10, 1909	5,000
Toale, P. P.	New York, N. Y.	Oct. 11, 1909	5,000
Patterson, Stephen W.	Bridgeport, Conn.	Oct. 12, 1909	1,000
Rivest, Ugel E.	Holyoke, Mass.	Oct. 12, 1909	1,000
Buchanan, Thos.	Cincinnati, Ohio.	Oct. 12, 1909	5,000
Post, Caleb.	Jerseyville, Ill.	Oct. 15, 1909	5,000
Kelmly, John W.	Hillis, Ga.	Oct. 15, 1909	1,000
Cahill, Edw.	Norwalk, Conn.	Oct. 17, 1909	1,000
Bradley, John A.	Sedalia, Mo.	Oct. 17, 1909	3,000
Cowing, Ransom F.	Lakewood, N. Y.	Oct. 19, 1909	2,000
Penette, Henry.	Chazy, N. Y.	Oct. 19, 1909	1,000
Gleisner, Michael.	Brucetown, Va.	Oct. 21, 1909	1,000
Brown, Lewis J.	Waterloo, Iowa.	Oct. 22, 1909	1,000
Woerner, Daniel.	Epworth, Ill.	Oct. 22, 1909	2,000
Miller, Wm.	Aurora, Ill.	Oct. 22, 1909	1,000
Cox, F. Marcellus.	Washington, D. C.	Oct. 23, 1909	5,000
Davis, John.	Los Angeles, Cal.	Oct. 24, 1909	2,000
Minor, Chas. K.	Buffalo, N. Y.	Oct. 25, 1909	2,000
Pfetzing, Justus.	Havana, Ill.	Oct. 25, 1909	5,000
Howard, Oliver Otis.	Burlington, Vt.	Oct. 26, 1909	10,000
Hunt, Marcus A.	Cincinnati, Ohio.	Oct. 26, 1909	5,000
Oyer, Chas. H.	Lacona, N. Y.	Oct. 26, 1909	1,000
Berwanger, Benj.	Far Rockaway, N. Y.	Oct. 27, 1909	5,000
Dettmann, Jno. F. D.	Cleveland, Ohio.	Oct. 28, 1909	1,000
Kespohl, Julius C.	W. Quincy, Ill.	Oct. 28, 1909	2,000
Carlisle, Wm. C.	New Decatur, Ala.	Oct. 29, 1909	2,000
Prager, Moses.	Savannah, Ga.	Oct. 29, 1909	5,000
Moss, Ulysses F.	Louisville, Ky.	Oct. 29, 1909	7,000
McGinley, Hugh.	Wilmington, Del.	Oct. 30, 1909	1,000
Fisher, Albert W.	Boston, Mass.	Oct. 31, 1909	5,000
Quinn, Pat'k J.	Bridgeport, Conn.	Oct. 31, 1909	2,000
Gilligan, John.	Charlotte, N. C.	Nov. 1, 1909	1,000
Taylor, Riley T.	Baltimore, Md.	Nov 3, 1909	3,000
Carson, David U.	Commerce, Ga.	Nov. 3, 1909	1,000
Weiland, Chas.	Milwaukee, Wis.	Nov. 3, 1909	2,500
Meroney, Wm. A.	San Francisco, Cal.	Nov. 4, 1909	2,000
Doak, T. J.	Woodbury, Tenn.	Nov. 4, 1909	2,000
Buchel, Otto.	Cuero, Texas.	Nov. 4, 1905	5,000
Allen, Wm. H.	New York, N. Y.	Nov. 6, 1909	5,000
Whiton, Erastus.	W. Somerv'e, Mass.	Nov. 6, 1909	1,000
Standish, Wm. O.	Montpelier, Vt.	Nov. 6, 1909	2,000
Stewart, Chas A.	Chicago, Ill.	Nov. 7, 1909	2,000
Jenner, John W.	Mansfield, Ohio.	Nov. 8, 1909	15,000
Hatcher, J. E.	Cordele, Ga.	Nov. 9, 1909	1,000
Lockwood, Frank J.	Randolph, N. Y.	Nov. 9, 1909	1,000

deposit of ten dollars per $1,000 of insurance during the first year of membership, and the table rate for mortality therefor, as printed on the certificate, was only two-thirds of that printed on certificate 128293, the table rate for age 51, the age in question, being 1.54, as shown therein.

Q. As a matter of fact, the assessment against Barber was based on the table rate of 1.54 at age 51, being the rate shown in the table in figures on policy 174416, being two-thirds of the rate shown in the table on policy 128293? A. That is right.

Q. And the difference in the amount assessed against him on the one policy for mortality purpose and the amount assessed him on policy 174416 and policy 128293 is that one of the policies is for $2,000 and one for $1,000? A. That is right.

Q. In each of these notices, Exhibits L and M, is a statement which reads as follows: "Payment will not be accepted later than March 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah." Did the defendant company receive payment of either of these calls on or before March 5, 1910, or at any time before or after that date? A. It did not.

Q. Was the amount of these assessments or any amount tendered to the company? A. There was not.

Q. I show you an envelope which bears upon it in the upper left-hand corner the return card of the Hartford Life Insurance Company, which is addressed by some mechanical process in printed type as follows: "Frank Barber, 2637 N. Sarah St., St. Louis, Mo.", and at the lower left-hand side of the address, in print also, are the figures 128293. The street address, to-wit, 2637 N. Sarah St., has been stricken out with pencil lines drawn across the words and figures 2637 N. Sarah

St., and at the bottom of the envelope in pencil appear the words and figures 4201 Pleasant Str. Will you explain how and under what circumstances that envelope was originally prepared and how it came back to you with the changes upon it? A. That envelope was originally prepared in the office of the Hartford Life Insurance Company, being addressed there to Frank Barber on an Elliott addressing machine, and sent to him with the notice of the call due March 1st, 1906, or some call prior thereto. It was received by the Hartford Life Insurance Company in March, 1906, with a remittance of the call due on that date on certificate 128293 on the life of Frank Barber. The address appearing thereon as 2637 N. Sarah Street, St. Louis, Mo., was the address as it appeared on the books of the company at that time. This number and street address being ruled off and 4201 Pleasant street written thereon indicated to us that Frank Barber had changed his address.

Q. Is this a copy of the envelope you have just testified to? A. It is.

The defendant offers envelope referred to in evidence, which is hereto attached and marked Defendant's Exhibit O.

The same being as follows:

EXHIBIT O.

After 10 days, return to
The Hartford Life Ins. Co.,
Hartford, Conn.

RETURN
this envelope
unsealed for
receipt.

FRANK BARBER
2637 N SARAH ST (Erased)
ST LOUIS
28293 MO
4201 Pleasant St.

Q. That envelope has been retained by your company in your office and among your files since it was thus returned with the change on it, as you have above testified? A. It has.

Q. Following that did you send to Frank Barber a postal card which I now show you, and what was its condition when you sent the postal card to him? A. We did send a postal card to Frank Barber, and it was blank excepting on its face, which was addressed in print to the Hartford Life Insurance Company, Hartford, Connecticut.

Q. And with respect to the back of it, or the letter part of it, what was the condition? A. Nothing was written on it.

Q. But all the printed part was there? A. That is right.

Q. And as the card went out at the bottom the printed matter read: "You will please address all communications until further notice to the undersigned at..... street, ... City of.....County of..... and State of..... Sign here." A. That is right.

Q. Did that card come back to you, and if so, at what date? A. That card came back to us on the 14th day of March, 1906.

Q. And when it came back was the lower part which I have just read and the blanks filled in as they now appear on the card? A. They were.

Q. So that when the card came back to you with the blanks filled in it read: "You will please address all communications until further notice to the undersigned at 4201 Pleasant street, City of St. Louis, County of

.....and State of Missouri. Sign here. Frank Barber." A. That is right.

Q. You have said that Frank Barber's address as it formerly appeared on the books of the company was 2637 N. Sarah street, St. Louis Mo.; is that correct? A. It was.

Q. After the return of that card was his address on your records changed, and if so, what was the change made? A. The address was changed to 4201 Pleasant street.

Q. Is the paper which you now have before you and which will be marked Exhibit P a copy of one of your records? A. It is.

Q. And of what record; what do you call it? A. Copy of certificate register.

Q. And does that register contain the names and addresses of the members of the men's division of the safety fund department? A. It does.

Q. And is this a copy of so much of the record as pertains to policy 174416 issued to Frank Barber? A. It is.

Q. In so far as it relates to his name and his address? A. It is.

Q. The page is ruled for a series of records concerning different policies and the records concerning each policy appearing between the double ruled blue lines? A. That is right.

Q. And so much as refers to the name and address of Frank Barber as it appears on your books with respect to policy 174416 is shown on this copy? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit P.

The same being as follows:

EXHIBIT P.

Assessment Register: This record was as follows:
Number of Policy—174416.
Date—9/4/1893—M. Zener.
Age—35.
Name—Frank Barber.
$2,000.
Canceled 3/31/1910.
Post Office Address—St. Louis.
Street No.—4201 Pleasant St.—3/26/06.
County—St. Louis.
State—Mo.
Notice Sent—Jan. 29, 1910.
Register Notice Sent—3/11/10. M.

Q. Now, when was it that the address on these records, Exhibits P and Q, was changed to 4201 Pleasant street? A. The 26th day of March, 1906.

The postal card, a copy of which has been heretofore testified about and which came back, as testified, on March 14, 1906, with the address 4201 Pleasant street, St. Louis, Missouri, inserted therein, is offered in evidence and hereto attached and marked Defendant's Exhibit R.

The same being as follows:

EXHIBIT R.

Q. Has that address of Frank Barber as it appears on these records, 4201 Pleasant street, St. Louis, Missouri, been the address which appeared on your records since the date you have indicated, March 26th, 1906, down to the present time? A. It has.

Q. Did you on March 10, 1910, send to Frank Barber any other or further notice on mortality call 126, and how were those notices sent? A. We did send other notices to Frank Barber on March 10, 1910, one in connection with certificate 128293 and the other in connection with certificate 174416. Those notices were sent by registered mail.

Q. What are the papers which you now have before you? A. The papers which I now have before me are copies of the notices which were so sent.

Q. With respect to what policy? A. 128293 on the life of Frank Barber.

Q. And they consist of two papers; one is headed how? A. Hartford Life Insurance Company, Hartford, Connecticut, registered letter notice.

Q. And the other is what? A. The other is a copy of the original notice which was sent to Frank Barber in connection with the same certificate on January 29, 1910, except that the words "second notice" were stamped upon it.

Q. Now, were those two papers enclosed in the same envelope? A. They were.

Q. And deposited in the post office at Hartford? A. They were.

Q. And sent by registered mail? A. They were.

Q. On March 10, 1910? A. On March 10, 1910.

Q. Was a registered letter notice sent to Frank Barber March 11, 1910, with respect to call 126 on policy 174416? A. There was.

Q. What are the papers which I now hand you? A. They are copies of notices which were sent to Frank Barber in connection with certificate 174416 on his life, on March 11, 1910. One of these papers is a copy of the original notice which was mailed on January 29, 1910, in connection with that certificate except that the words "Second Notice" were stamped upon it; the other has on it "Hartford Life Insurance Company, Hartford, Connecticut, registered letter notice", and is the regular second notice which was sent by registered mail.

Q. Were those two notices inclosed in an envelope and deposited in the post office at Hartford? A. They were.

Q. And sent by registered mail? A. They were.

Q. And were sent by registered mail on what date? A. March 11, 1910.

The defendant offers papers referred to in evidence, which are attached, the registered letter notice being marked Exhibit T-1 and the second notice being marked Exhibit T-2.

The same being as follows:

EXHIBIT T-1.

Registered Letter Notice.

Hartford Life
Insurance Company,
Hartford, Conn.

March 11, 1910.

You are hereby notified that Quarterly Call No. 126, on policy No. 2-174416, notice of which was

mailed you Jan. 29, 1910, and duplicate of which is enclosed herewith, has not been paid.

Unless the amount of $13.69, the amount due on said Quarterly Call including FIFTY CENTS FOR THIS NOTICE, is received at this office on or before *Mar. 20, 1910, your policy will be canceled.

Geo. E. Keeney,
President.

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*Mar. 30th if residence is on or west of the meridian of Salt Lake, Utah.

EXHIBIT T-2.

HARTFORD LIFE INSURANCE COMPANY,

Hartford, Conn. January 29th, 1910.

Special Notice of Quarterly Call No. 126.

Your next Quarterly Call will fall due and be payable June 1, 1910.

SECOND NOTICE.

Frank Barber,
4201 Pleasant St.,
St. Louis, Mo. 15
2—174416

This Call which will be due Mar. 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list). Benefits, $322,378.48 and expenses on your policy, as follows:

For Mortality Call	$13.09
For Quarterly Dues to June next	1.50
Credit	$14.59
Dividend to be applied if payment be made	1.40
Amount Due	$13.19

Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the

meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to

Hartford Life Insurance Company.

Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

See over for Special Notice.

SPECIAL NOTICE.

If the payment of the above Quarterly Call is not received at this office on or before *Mar. 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policy-holder by registered letter, giving until *Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Mar. 5, 1910, will be obliged to pay this fifty-cent fee in order to have the policy unconditionally reinstated.

After *Mar. 20, 1910, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of reinstatement.

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*If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

Q. Now, did you receive back, through the United States mail, a card designated "Registry Return Re-

ceipt", the original of which I now show you, a copy of which will be marked Exhibit V? A. We did.

Q. And that is the registry return receipt for the notice on policy 128293 sent March 10, 1910, is it not? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit V.

The same being as follows:

EXHIBIT V.

Post Office Department
Official Business.

Original Reg. No. 2197
Return to:
Hartford Life Insurance Co.
(Name of Sender)
51721
Street and Number or Post Office Box,
Hartford, Connecticut.
Penalty for Private Use to Avoid Payment of Postage, $300.
Postmark of Delivering Office
(Water Tower Sta., Saint Louis, Mo.
Registered Mar. 14, 1910.)
and Date of Delivery.
(Stamped)
St. Louis, Mo., Mar. 14, 12 P. M.

This card must be neatly and correctly made up and addressed at the post office where the article is registered. The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

(Reverse Side)

188. Form 1548.

REGISTRY RETURN RECEIPT.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

Date of delivery, Mar. 14, 1910.

(To be filled in by person signing receipt.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

FRANK BARBER

(Signature or name of addressee.)

.....

(Signature of addressee's agent.)

A registered article must not be delivered to any one but the addressee or the person in whose care it is addressed, except upon addressee's written order or a written order from the sender transmitted by the mailing postmaster and duly verified.

When the above receipt has been properly signed it must be postmarked with the name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

Q. The originals of these registry return receipts are now before you? A. They are.

Q. Has the original of registered letter notice and of the assessment notice therein inclosed marked "Second Notice", which was sent out by you on March 11, 1910, with respect to policy 174416 ever been returned to you? A. It has not.

Q. And have you ever seen either of the registered letter notices or of the accompanying documents since

they were sent by mail, as you have testified? A. I have not.

Q. On March 22nd, 1906, after you received back the postal card which contained the address 4201 Pleasant street, and which has been offered in evidence and marked Exhibit R, did you write to Frank Barber? A. We did, on March 22nd, 1906. We wrote acknowledging receipt of his instructions; that we would change his address to 4201 Pleasant street, St. Louis, Missouri.

Q. Is the paper which you now have before you a copy of the letter which you wrote to Frank Barber? A. It is.

Q. As preserved by you in the records of the company? A. It is.

Q. What has become of the original of that letter? A. The original of that letter was mailed to Frank Barber at his address at St. Louis on the 22nd day of March, 1906.

Q. Have you ever seen the original of that letter since? A. We have not.

The defendant offers paper referred to in evidence, which is hereto attached and marked Exhibit W.

The same being as follows:

EXHIBIT W.

March 22, 1906.

Frank Barber, Esq.

Dear Sir:

We acknowledge receipt of your instructions dated, for change of address to 4201 Pleasant St., St. Louis, Mo., for all notices of amounts to become due under Policy No. 128293 and will give the same proper attention.

Yours respectfully,

Chas. H. Bacall,

Secretary.

Q. I show you a letter dated St. Louis, December 3rd, 1901, purporting to be signed by Frank Barber, a copy of which will be attached to these depositions and marked Exhibit X, and ask you if the defendant company received that letter, and if so, about what date? A. The company did receive that letter about the 5th of December.

The defendant offers paper referred to in evidence, which is hereto attached and marked Exhibit X.

The same being as follows:

EXHIBIT X.

Dec. 3, 1909.

Hartford Life Insurance Co.

Gentlemen:

Please enclosed find order for $21.38 as per last notice and also inform me why it is that the quarterly premiums are continually increasing.

Hoping for a favorable reply at once, I remain,

Yours respectfully,

Frank Barber.

Q. Did the company reply to that letter last referred to under date of December 16th, and is the paper which I now show you a copy of the letter of that date sent to Frank Barber? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Exhibit Y.

The same being as follows:

EXHIBIT Y.

Dec. 16, 1909.

Mr. Frank Barber,
St. Louis, Mo.

Dear Sir:

We are in receipt of your favor of the 3rd inst., in reference to certificates No. 174416 on the life 128293 of Frank Barber. We note what you have to say in regard to the increase in the assessments, and in reply would state that you evidently do not understand the plan on which this certificate was issued or the method of computing assessments. We enclose herewith an explanation of the manner in which assessments are computed on this certificate.

You will see that there are two factors which determine the amount of the assessments; one the rate, which is fixed for each age, and the other the ratio, which depends upon the actual mortality experienced in the Men's Division of the Safety Fund Department of the company. This certificate is now assessed at the rate for age 51 and on the call due December 1st, at a ratio of 4.20, as you will note by the table of ratios on the reverse side of the slip mentioned above.

The increase in the amount of this call over the last call is due to the increase in the ratio from 3.80 to 4.20, due to an increase in death losses from $309,500.00 to $334,750.00. You will note that the rate as far as the age is concerned does not increase beyond age 65. The assessments beyond that age, however, will still vary, as they will depend upon the ratio, which varies with the mortality experienced by the company.

It is true that the cost of this insurance has increased as the assessments have been levied in accordance with the system and the terms of the contract, but as a matter of fact, this certificate has given cheaper insurance than could have been had in any company of which we know which gives real insurance.

We enclose receipt for the call due the 1st inst.

Very truly yours,

T. F. Lawrence,

Secretary.

Q. The original of that was sent to whom? A. Frank Barber.

Q. By mail? A. By mail.

Q. Have you ever seen the original of it since? A. We have not.

Q. Do your records show the date upon which each assessment call was paid on each of these policies? A. They do.

Q. Have you compiled from your records the dates on which assessment was paid under each of these policies? A. I have.

Q. Is the paper which I now show you a compilation from your records showing with respect to certificate No. 174416, the year, the call number, the amount of assessment, date of notice, date when due, date when paid, in respect to each assessment levied as against Frank Barber on that certificate? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit AA.

The same being as follows:

EXHIBIT AA.

Certificate No. 174416—Frank Barber.

Year.	Call No.	Amt. of Assessment.	Date of Notice.	Date Due.	Date Paid.
1894	62	1.80	1-30-94	3-1-94	3- 1-94
	63	4.45	5- 2	6-1	5-30
	64	4.45	8- 2	9-1	8-30
	65	4.60	11- 1	12-1	11-30
1895	66	4.60	1-30-95	3-1	2-28-95
	67	5.33	5- 2	6-1	5-31
	68	4.90	8- 2	9-1	9- 2
	69	5.06	11- 1	12-1	12- 2
1896	70	5.06	1-30-96	3-1	3- 3-96
	71	5.06	5- 2	6-1	6- 3
	72	5.06	8- 2	9-1	9- 1
	73	5.18	11- 1	12-1	12- 2
1897	74	5.18	1-29-97	3-1	3- 2-97
	75	5.18	5- 2	6-1	6- 2
	76	5.18	8- 2	9-1	9- 2
	77	5.34	11- 1	12-1	12- 4
1898	78	5.57	1-30-98	3-1	3- 3-98
	79	6.67	5- 2	6-1	5-30
	80	6.67	8- 2	9-1	9- 1
	81	6.86	11- 1	12-1	12- 2
1899	82	6.85	1-30-99	3-1	3- 2-99
	83	6.85	5- 2	6-1	6- 5
	84	6.85	8- 2	9-1	9- 1
	85	6.98	11- 1	12-1	12- 2
1900	86	6.98	1-30-00	3-1-00	3- 2-00
	87	6.98	5- 2	6-1	6- 4
	88	7.57	8- 2	9-1	9- 5
	89	7.69	11- 1	12-1	12- 5
1901	90	7.69	1-30-01	3-1-01	3- 5-01
	91	7.69	5- 2	6-1	6- 5
	92	8.53	8- 2	9-1	9- 5
	93	8.06	11- 1	12-1	12- 5
1902	94	9.14	1-30-02	3-1-02	3- 5-02
	95	9.14	5- 2	6-1	6- 5
	96	9.07	8- 2	9-1	9- 4
	97	8.00	11- 1	12-1	12- 5
1903	98	8.00	1-30-03	3-1-03	3- 5-03

	99	8.00	5- 2	6-1	6- 5
	100	8.00	8- 2	9-1	9- 5
	101	7.02	11- 1	12-1	12- 5
1904	102	8.26	1-30-04	3-1-04	3- 5-04
	103	9.50	5- 2	6-1	6-20
	104	9.50	8- 2	9-1	9- 5
	105	9.23	11- 1	12-1	12- 5
1905	106	9.23	1-30-05	3-1-05	3- 4-05
	107	9.74	5- 2	6-1	6- 5
	108	9.21	8- 2	9-1	9- 5
	109	10.12	11- 1	12-1	12- 5
1906	110	10.12	1-30-06	3-1-06	3- 5-06
	111	9.31	5- 2	6-1	6- 5
	112	9.99	8- 2	9-1	9- 5
	113	8.85	11- 1	12-1	12- 5
1907	114	9.68	1-30-07	3-1-07	3- 5-07
	115	9.80	5- 2	6-1	6- 5
	116	8.84	8- 2	9-1	9-18
	117	8.61	11- 1	12-1	12-20
1908	118	9.18	1-30-08	3-1-08	3-24-08
	119	10.88	5- 2	6-1	6-20
	120	10.32	8- 1	9-1	9- 5
	121	9.92	11- 1	12-1	12- 5
1909	122	11.30	1-30-09	3-1-09	3- 5-09
	123	11.30	5- 1	6-1	6- 5
	124	11.30	8- 2	9-1	9-21
	125	13.09	11- 1	12-1	12- 6

Q. In Exhibit M, being notice of call 126 on policy 174416, there is an item of quarterly dues to June next, $1.50; what does that refer to? A. That item refers to the quarterly dues which were payable under the following provisions in the contract, certificate 174416, in paragraph 2 on the second page, entitled "Of Payments": "The member agrees to pay to said company, for expenses, dues of three dollars per annum on each $1,000 indemnity on the first day of the month after the date of issue hereof and at every anniversary thereafter so long as this certificate shall remain in force; or by *pro rata* installments of the same, in ad-

vance, for periods of less than a year." Dues on this certificate were paid quarterly on the regular assessment dates, and there were, therefore, dues of $1.50 due on the first day of March, 1910.

Q. One dollar and fifty cents being one-fourth of six dollars, and six dollars being the amount of dues payable on that policy per annum because of the provisions that he was to pay three dollars per annum per thousand? A. Yes.

Q. Was that item of $1.50 dues ever paid? A. It was not.

Q. Do your records show the dates on which dues on each of these policies was paid by Frank Barber while the policies were in force? A. They do.

Q. Is the paper which I now show you a compilation from your records showing the year, the date when due, and the date when paid with respect to the dues on certificate 174416? A. It is.

Q. And the amount of dues paid on that certificate at the several dates therein named was how much? A. $1.50.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit CC.

Which is as follows:

EXHIBIT CC.

Certificate No. 174416—Frank Barber.

	Dues.	
Year.	Date Due.	Date Paid.
1893	9-1-93	9-15-93
	12-1	11-30
1894	3-1-94	3- 1-94
	6-1	5-30
	9-1	8-30
	12-1	11-30

1895	3-1–95	2-28–95
	6-1	5-31
	9-1	9- 2
	12-1	12- 2
1896	3-1–96	3- 3–96
	6-1	6- 3
	9-1	9- 1
	12-1	12- 2
1897	3-1–97	3- 2–97
	6-1	6- 2
	9-1	9- 2
	12-1	12- 4
1898	3-1–98	3- 3–98
	6-1	5-30
	9-1	9- 1
	12-1	12- 2
1899	3-1–99	3- 2–99
	6-1	6- 5
	9-1	9- 1
	12-1	12- 2
1900	3-1–00	3- 2–00
	6-1	6- 4
	9-1	9- 5
	12-1	12- 5
1901	3-1–01	3- 5–01
	6-1	6- 5
	9-1	9- 5
	12-1	12- 5
1902	3-1–02	3- 5–02
	6-1	6- 5
	9-1	9- 4
	12-1	12- 5
1903	3-1–03	3- 5–03
	6-1	6- 5
	9-1	9- 5
	12-1	12- 5
1904	3-1–04	3- 5–04
	6-1	6-20
	9-1	9- 5
	12-1	12- 5
1905	3-1–05	3- 4–05
	6-1	6- 5
	9-1	9- 5

	12-1	12- 5
1906	3-1-06	3- 5-06
	6-1	6- 5
	9-1	9- 5
	12-1	12- 5
1907	3-1-07	3- 5-07
	6-1	6- 5
	9-1	9-18
	12-1	12-20
1908	3-1-08	3-24-08
	6-1	6-20
	9-1	9- 5
	12-1	12- 5
1909	3-1-09	3- 5-09
	6-1	6- 5
	9-1	9-21
	12-1	12- 6

Q. Do your records show the amount of money received from the members of the safety fund department, men's division, for mortality calls and the amount paid out therefrom for death losses year by year from 1880 to December 31, 1909? A. They do.

Q. Is the paper which I now show you a statement, year by year, of the amount received from members of the men's division, safety fund department, for mortality calls and the amount paid therefrom for death losses year by year? A. It is.

Q. The amount received for mortality calls being shown in the second column and the amount paid for death losses in the third column? A. That is right.

Q. What was the balance in the mortuary fund December 31st, 1909? A. $74,938.32.

Q. That is the last figure shown before the totals and designated "Mortality balance December 31st, 1909"? A. That is right.

Q. And is the paper which you now have before you? A. Yes.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit DD.

Which is as follows:

EXHIBIT DD.

The company has received for mortuary purposes, and paid for death losses, during this long period totals as follows:

TABLE No. 1.

	Received from Mortality Calls.	Paid for Death Losses.
1880	$ 21,551.02	$ 17,965.00
1881	118,263.17	111,603.00
1882	158,710.19	147,440.00
1883	210,823.83	199,165.00
1884	217,047.36	207,427.00
1885	386,204.91	434,415.00
1886	515,029.50	516,940.00
1887	573,775.08	531,589.00
1888	626,517.40	625,466.00
1889	676,937.06	702,368.94
1890	800,199.27	779,085.55
1891	906,179.19	905,122.00
1892	1,065,525.94	1,023,608.28
1893	996,065.14	1,059,775.00
1894	1,031,351.22	1,039,561.00
1895	1,132,808.93	1,141,153.76
1896	1,125,972.73	1,108,487.37
1897	1,121,550.87	1,241,921.17
1898	1,289,080.22	1,130,084.00
1899	1,279,544.53	1,201,784.49
1900	1,297,629.67	1,347,949.07
1901	1,402,750.62	1,403,343.01
1902	1,371,681.50	1,333.691.73

1903	1,177,544.63	1,167,953.16
1904	1,341,198.26	1,269,899.72
1905	1,341,165.22	1,444,994.11
1906	1,277,385.39	1,217,377.79
1907	1,170,510.06	1,110,045.50
1908	1,183,143.62	1,296,621.37
1909	1,257,737.17	1,282,107.56
Mortality balance Dec. 31, 1909...	.....	74,938.32
	$27,073,883.70	$27,073,883.70

Q. In the trustee's contract, a copy of which is attached to the certificates of membership sued on in this case, it is provided as follows: "Now, therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its certificate holders and hereinbefore recited, does hereby appoint the party of the second part trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every certificate of membership issued by it in the aforesaid department until said fund shall amount to one million dollars, to be by said trustee held in trust and accumulated, as hereinafter agreed, and the income thereof, less the reasonable compensation and expenses of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements." I now show you paper which will be marked Exhibit EE and ask you what

the paper shows? A. That paper shows year by year the amount received in deposits from members and the amount of such deposits deposited by the Hartford Life Insurance Company with the security company in accordance with the terms of the trustee's contract.

Q. Now, then, with respect to the year 1880, you received $20,363.52 and you deposited with the security company a similar amount; is that correct? A. It is.

Q. In the year 1881, under the column headed "Received from Members", appear two items, $4,673.52 and $45,702.22, whereas the amount deposited, as shown by this tabulation, with the security company in that year was $45,698.76. Will you please explain why, in the compilation under the year 1881, there are two sets of figures, $4,673.52 and $45,702.22, and why the aggregate of those two amounts was not deposited with the safety fund? A. As has been before stated in this testimony, the safety fund, men's division, of the Hartford Life Insurance Company was established in 1880. In 1881 a separate division called the security fund division was established, and this division was established so that the company could take a larger line of insurance on one life, the original limit of the safety fund department being $5,000 on one life. The security fund division was absolutely separate, having a separate trustee's contract providing for a separate fund known as the security fund, and a separate mortuary fund, the members being assessed entirely separate from the members of the safety fund department. The first item appearing, "Received from Members", in the year 1881, $4,673.52, were the deposits received from the security fund. The second item, $45,702.22, was the amount received in deposits from the men's division of the safety fund. The first item was depos-

ited with the security company under the trustee's contract of the security fund and deposited in that fund, and only the second item was deposited in the safety fund under the terms of the trustee's contract creating that fund. The slight discrepancy between the amount received from the members of the safety fund department and the second item, $45,702.22, and the amount deposited with the security company, $45,698.76, was undoubtedly due to some small payments received the last day of the year which could not be deposited with the security company on that date, but were later so deposited. The same explanation is true of the items appearing under "Received from Members" in the years 1882, 1883, 1884, 1885 and 1886. The large amount, $155,166.34, appearing in the third column, deposited with the security company in the year 1886 was occasioned by the transfer of all the money then in the security fund and the safety fund of the men's division. At that time all of the contracts that were issued in the security fund division were surrendered by the members of that division and new certificates were issued to them in the safety fund department, their fund being then consolidated with the funds of the men's division of the safety fund department.

Q. And the sum total of all those years, the amount which you received from members, was $1,290,113? A. Yes.

Q. And the sum total received from all those members during the same period, which goes down to and includes December 31st, 1909, was also $1,290,113? A. That is right.

The defendant offers paper referred to in evidence,

which is hereto attached and marked Defendant's Exhibit EE.

Which is as follows:

EXHIBIT EE.

Year	Received from Members	Deposited with Security Co.
1880	$ 20,363.52	$ 20,363.52
1881	4,673.52)	
	45,702.22)	45,698.76
1882	13,097.07)	
	53,799.48)	53,234.94
1883	24,873.77)	
	67,112.44)	67,586.20
1884	17,139.44)	
	52,257.31)	52,351.55
1885	7,950.86)	
	56,712.22)	56,720.31
1886	8,902.39)	
	78,537.38)	155,166.34
1887	86,152.67	86,136.67
1888	71,730.30	71,745.32
1889	82,075.87	82,075.87
1890	96,260.12	96,160.12
1891	85,610.56	85,645.65
1892	85,053.09	85,037.40
1893	59,190.03	59,170.03
1894	50,453.70	50,554.30
1895	45,688.61	45,688.61
1896	33,011.70	33,011.70
1897	32,582.68	32,582.68
1898	28,296.68	28,296.68
1899	22,485.00	22,484.20
1900	17,619.97	17,619.97
1901	15,068.39	15,068.39

1902.....	11,206.12	11,206.12
1903.....	7,313.75	7,313.75
1904.....	4,304.04	4,304.04
1905.....	2,074.60	2,074.60
1906.....	796.00	796.00
1907.....	930.00	930.00
1908.....	690.00	691.78
1909.....	397.50	397.50
	$1,290,113.00	$1,290,113.00

Q. By the trustee's contract, a copy of which is set forth on certificates sued on in these cases, it is provided that after the funds shall reach $300,000 par value of the bonds purchased for said fund, the party of the second part will pay over to the party of the first part, semi-annually thereafter, all further income from said fund (less the accruing and unpaid compensation and expenses), to be paid by the party of the first part and used for the purposes mentioned in the hereinbefore recited agreements. Was the income and accretions from the safety fund paid over to you semi-annually by the security company, the trustee in that contract? A. It was.

Q. What did you do with that income and accretions as paid over to you? A. We apportioned it to the members, to be applied in dividends in reduction of their assessments, in accordance with the terms of the contract, which provided that all members who have completed their safety fund deposit five years previously are entitled to participate in the dividends from the income and accretions.

Q. What do you mean by accretions? A. I mean deposits to the fund after it reached its limit of $1,000,000 par value.

Q. The contract provides that not only the income of the fund, but after the fund reaches $1,000,000 par value all further payments by members to that fund shall be used in reduction by way of dividend credits on the assessments levied against members. A. As well as the income, yes.

Q. Is the paper which I now hand you and which will be marked Exhibit FF a statement of the income and accretions received by the defendant company from the security company and the disbursements thereof by way of dividend credits to members? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit FF.

Which is as follows:

EXHIBIT FF.

Year	Income and Accretions Received from Security Company	Disbursements
1886	$ 12,675.44	$ 12,676.44
1887	12,082.19	11,976.28
1888	14,507.58	14,668.72
1889	16,214.71	16,214.71
1890	17,328.91	17,328.91
1891	25,111.60	24,840.35
1892	29,542.05	29,402.17
1893	39,589.58	39,909.77
1894	46,378.02	45,999.24
1895	95,156.67	95,189.82
1896	84,131.22	84,770.84
1897	70,265.98	69,375.93
1898	79,415.12	79,166.24
1899	71,642.81	71,085.9
1900	46,795.37	46,352.13

1901	54,571.17	54,929.24
1902	46,633.02	47,697.40
1903	50,546.03	51,232.07
1904	42,081.07	40,722.54
1905	40,869.20	41,464.92
1906	41,975.96	44,499.00
1907	39,395.14	42,002.27
1908	60,286.74	36,730.08
1909	39,288.95	38,802.13
	Balance Dec. 31, 1909,	19,447.39
	$1,076,484.53	$1,076,484.53

Balance undistributed Dec. 31, 1909	$19,447.39	
Dividend Distribution, Call 126 (Jan. 29, '10), among members Men's Division holding $27,171,750 of Indemnity		$19,020.70
Retained in dividend account to cover dividends previously declared on policies where the time for payment of a call was extended		426.69
	$19,447.39	$19,447.39

Q. Does the second column show the amount of income and accretions received by you year by year from the security company? A. It does.

Q. And does the second column, all except the last item, which reads "Balance December 31st, 1909", show the amounts actually paid out by you by way of credit in reduction of the assessments levied against

the members of the safety fund department, men's division? A. It does.

Q. On December 31st, 1909, there was a balance, as shown by this tabulation, in your hands of $19,447.39. Is that correct? A. It is.

Q. Now, what was done with that balance during January, 1910? A. During January, 1910, that balance, $19,020.70, was apportioned to the certificate holders whose certificates were then in force and who had completed their deposits five years previously as a credit to be used in the reduction of their assessments due March 1st, when they were paid.

Q. That $19,447.39 was divided by what number to ascertain that apportion? A. By the number of one thousand dollar certificates in force December 31st, 1910, who were entitled to participate in the dividends, which was 27,171¾.

Q. The total amount of insurance then in force in the men's division of the safety fund department entitled to participate in the distribution of that fund was how much? A. $27,171,750.

Q. And dividing that sum into $19,447.39 gives you what result? A. You don't divide it that way; you divide the number of thousand of insurance.

Q. Well, the number of thousands of insurance was 27,171¾, and dividing 27,171¾ into $19,447.39 gave you what result? A. .715 or 71.5 cents per thousand dollars of insurance.

Q. And you actually apportioned as a dividend on call 126 how much per thousand of insurance? A. 70 cents.

Q. And what is the item on Exhibit L, being the notice of mortuary call 126 sent to Frank Barber on

policy 128293, which reads "Dividend to be applied if payment be made, 70 cents"? A. That is the dividend apportioned to that certificate in the tabulation Exhibit FF.

Q. And what is the item on Exhibit M, being the notice of mortuary call 126 as pertains to policy 174416, which reads, "Dividend to be applied if payment be made, $1.40"? A. That is the dividend apportioned to that certificate in the tabulation Exhibit FF.

Q. And that amount, $1.40, is twice the dividend on policy 128293 because the policy is for $2,000, whereas the other policy is for $1,000? A. That is right.

Q. 27,171¾ multiplied by 70 gives you the item 19,020.70, which is the last figure but two in the outer right-hand column of Exhibit FF? A. That is right.

Q. And is the sum of the dividend of 70 cents per thousand credited to that amount of insurance? A. That is right.

Q. Now, deducting $19,020.70, which was the amount apportioned, from the 19,447.39, which was the balance you then had in hand, leaves a difference of $426.69, which was retained in the dividend fund in January after the apportionment of the dividend call 126? A. That is right.

Q. Now, for what purpose was that $426.69 retained? A. It was not apportioned, but was retained in the dividend account to cover dividends previously declared on certificates on which an extension of time had been granted for the payment of previous call.

Q. Except for this balance thus retained, was all the money which you had theretofore received from the security company distributed, paid to or apportioned

to members by way of dividends on their assessments? A. Yes, sir; every cent.

Q. I wish you would begin with this record with the year 1908, column headed 1908, and explain what the figures which appear in every column from there to the end of the page indicate? A. The first figures in the column under "March" refer to the call due December 1st, 1907. The figures at the top, ".75", are the dues on that call. The next figures, ".10", are the taxes assessed on that call and the last figures, "4.30", are the amount of the mortality call. The figures in red at the left, 12-20, indicate that the payment of that call was made and that it was checked on the books on December 20, 1907. The next column of figures refers to the call due March 1st, 1908. The figures .75 are the amount of the dues on that call. The figures .11 are the amount of taxes assessed on that call, and the figures 4.59 represent the amount of the mortality call. The figures below, 3-12-08, represent the date on which the registered second notice was sent, on March 12, 1908. The figures in red ink to the left indicate that the call was paid and checked on the books as paid March 24, 1908. The figures to the right, "D60", indicate that a dividend of .60 was allowed in reduction of this call. The next column refers to the call due in June, 1908. The figures .75 represent the amount of dues, the figures .13 the amount of taxes assessed on that call, and the figures 5.72 represent the amount of the mortality call. The figures below, 6-13-08, indicate the date that the registered second notice was sent, June 13, 1908. The figures in red on the left indicate that the payment was made and checked on the books June 20th, 1908. The next column of figures referred to call due September 1st, 1908. The figures

.75 represent the amount of the dues, the figures .12 represent the amount of the taxes assessed and the figures 5.41 represent the amount of the mortality call. The figures 9-5 in red to the left indicate that the call was paid and checked on the books September 5, 1908. The figures on the right, D60, indicate that a dividend of .60 was allowed in reduction of this call. The next column of figures refer to call due December 1st, 1908. The figures .75, being the amount of the dues, the figures .11 being the amount of the taxes assessed, and 4.96 being the amount of mortality call. The figures 12-5 in red ink to the left indicate that the call was paid and that the payment was checked on the books December 5, 1908. The figures in the next column refer to the call due March 1st, 1909, .75 being the amount of dues, .07 the amount of taxes and 5.66 the amount of the mortality call. The figures in red ink to the left, 3-5, indicate that the call was paid and that the payment was checked on the books March 5, 1909. The figures to the right, D65, represent the dividend of .65 which was allowed in reduction of this call. The next column refers to the call due June 1st, 1909, .75 being the amount of the dues, .07 the amount of the taxes assessed and 5.92 the amount of the mortality call. The figures below, 1-09, indicate that the notice of the call was sent May 1st, 1909. The figures in red at the left, 6-5, indicate that the payment was made and that it was checked on the books on the 5th day of June, 1909. The figures in the next column refer to the call due September 1st, 1909, .75 being the amount of dues, .07 the amount of taxes assessed, $5.92 the amount of mortality call. The figures, 2-09, indicate that the first notice was sent August 2nd, 1909, and the figures, 9-14-09, indicate that the registered second notice was sent

on September 14, 1909. The figures to the left in red ink, 9-21, indicate that this call was paid and that it was checked on the books on September 21, 1909. The figures to the right, D60, represent the dividend of .60 that was allowed in reduction of this call. The next column refers to the call due December 1, 1909, .75 being the amount of dues, .07 the amount of taxes, 6.54 the amount of the mortality call. The figures 1-09 below indicate that the first notice was sent November 1st, 1909. The figures in red ink to the left, 12-09, indicate that the call was paid and that the payment was checked on the books December 6, 1909. The figures in the next column refer to the call due March 1st, 1910, .75 being the amount of the dues, .07 the amount of taxes and 6.54 the amount of the mortality call. The figures below, 29-1910, indicate that the first notice was sent January 29, 1910, and the figures 3-10-10 indicate that the registered second notice was sent March 10, 1910. The figures in the next column represent the dues that would have been payable had the certificate been kept in force and a payment come due on June 1st, 1910. The dues, being constant, were extended across the page and filled in for payments in advance. The same is true of the item of .75 in the last column. These two items were ruled out, as the certificate lapsed for non-payment of the call due March 1st, 1910.

Q. Now, the figures referred to in the column headed June and July, being the fifth column made by blue lines on the right-hand side of the page, relate to what mortality call? A. 126.

Q. And why is that entered under the column headed June and July? Have those dates at the top of the column anything to do with the record? A. Not with

this record. They did originally when the books were made up, but for convenience, in having the calls come in succeeding columns in different books, they have not been entered under the months designated.

Q. So that the months at the head of the column in every instance is utterly disregarded? A. Yes, that is right.

Q. And the endorsement in the red squares, registered notice sent 3-10-10, is a record which you kept of the registered notice which was sent to Frank Barber and about which you have heretofore testified, being Exhibits S-1 and S-2? A. Yes.

Q. I wish you would examine Exhibit P, being copy of certificate register as it relates to Frank Barber's policy 174416, and in the same way explain the figures on that record, beginning with 1908. A. The first column in which there are figures refers to the call due December 1st, 1907, and the figures 1.50 represent the amount of the expense dues, .21 the amount of the taxes assessed and $8.61 the amount of the mortality call. The figures to the left in red ink, 12-20, indicate that the call was paid and that it was checked upon the register on the 20th day of December, 1907. The figures in the next column refer to the call due March 1st, 1908. The figures 1.50 represent the amount of the expense dues, .22 the amount of the taxes assessed and 9.18 the amount of the mortality call. The figures below, "Cr. 50", indicate that the member paid .50 more than was necessary on the previous call and that this .50 was credited to him in reduction of this call. The figures 3-12-08 below show that the registered second notice was sent to the member on March 12, 1908. The figures in red ink to the left, 3-24, indicate that the call was paid and the payment checked on the register

as March 24, 1908. The figures to the right, D1.20, represent a dividend of 1.20 allowed in reduction of this call. The figures in the next column refer to the call due June 1, 1908, 1.50 being the amount of expense dues, .24 the amount of the tax assessed and $10.88 the amount of the mortality call. The figures 6-13-08 indicate that the registered second notice was sent to the member on the 13th day of June, 1908. The figures in red ink to the left, 6-20, show that the payment was made and that it was checked upon the register June 20, 1908. The figures in the next column refer to the call due September 1st, 1908, 1.50 being the amount of the expense dues, .24 being the amount of the tax assessed, $10.32 the amount of the mortality call, and the figure below, "Cr. .50", indicates that the previous call was overpaid .50 and that amount was allowed in reduction of this call. The figures in red ink to the left, 9-5, shows that the call was paid and that the payment was checked upon the books September 5, 1908, the figures to the right, D1.20, shows that a dividend of 1.20 was allowed in reduction of this call. The figures in the next column refer to the call due September 1st, 1908, 1.50 being the amount of expense dues, .22 the amount of the tax assessed and $9.92 the amount of the mortality call. The figures in red ink to the left show that the call was paid and that the payment was checked on the books on the 5th day of December, 1908. The figures in the next column refer to the call due March 1st, 1909, 1.50 being the expense dues, .13 the amount of the tax assessed and 11.30 the amount of the mortality call. The figures 30-09 below show that the notice was sent January 30th, 1909. The figures in red ink to the left, 3-5, show that the call was paid and the payment checked on the books March 5th, 1909. The

figures to the left, D1.30 show that a dividend of 1.30 was allowed in reduction of this call as a dividend from the safety fund. The figures in the next column refer to the call due June 1st, 1909, 1.50 being the amount of the expense dues, .13 the amount of the tax assessed and 11.30 the amount of the mortality call. The figures below, 1-09, show that the notice was sent May 1st, 1909. The figures to the left, 6-5, in red ink show that the call was paid and the payment checked on the books June 5, 1909. The figures in the next column refer to the call due September 1st, 1909, 1.50 being the amount of expense dues, 1.13 the amount of the tax assessed and 11.30 the amount of mortality call. The figures 2-09 indicate that the notice was sent on August 2nd, 1909. The figures to the left in the square, 9-14-09, indicate that the registered second notice was sent on September 14, 1909, and the figures 9-21 to the left show that the payment was made and that payment was checked upon the books September 21, 1909. The next column refers to call due September 1st, 1909, 1.50 being the amount of the dues, .15 the amount of the tax assessed and 13.09 the amount of the mortality call, and the figures below, 1-09, show that the notice was sent November 1st, 1909. The figures to the left in red ink, 12-6, show that the payment was made and that it was checked upon the books December 6, 1909, and the figures to the right, Cr. .50, show that the previous call was overpaid .50 and that that amount was credited in reduction of this call. The figures in the next column refer to call due March 1st, 1910, 1.50 being the amount of the dues, .15 the amount of the tax assessed, 13.09 the amount of the mortality call and the figures below, 29-10, show that the notice was sent January 29th, 1910, and the figures to the left, 11-10,

show that the registered second notice was sent March 11, 1910. The figures to the right, D1.40, show that a dividend of 1.40 had been apportioned to this certificate on this call, to be allowed in reduction of same if it were paid. In the next column appears an item of 1.50 crossed out. This was the amount of the dues that would have been charged on the call due June 1st, 1910, had the certificate been in force on that date and not lapsed for non-payment of the call due March 1st, 1910. This figure and the figure in the next column, 1.50, also ruled out, were filled in, the dues being constant, for the sake of clerical convenience.

Q. Do the months at the heads of the several columns from which you have been reading have any relation to the record whatever? A. They do not.

Q. The record is made notwithstanding the dates of the month inserted at the top of the column in print? A. That is true.

Q. On Exhibit P there is no record after the last memorandum, "Notice sent January 29, 1910", except the red ink endorsement to the left thereof, which reads "Registered Notice 3-11-10"; is that correct? There is no record of any payment made on this policy after those dates? A. The last record of any payment made was the record of the call due December 1st, 1909, which the record shows in red ink to have been paid December 6th, 1909.

Q. To the right of the column in which the records are contained from which you have just been reading there are certain blanks, are there not? A. Yes, there are blanks beyond the record of the call due March 1st, 1910, for non-payment of which the certificate lapsed.

Q. And those blanks are intended to record what? A. They were intended to record the calls due June 1st,

1910, and September 1st, 1910, had the certificates been kept in force.

Q. And there is no record made in those columns of any payment beyond the payments which you have read? A. No, there is no record of any payment beyond that of call due December 1, 1909. There is a record of the amount that was assessed on the call due March 1st, 1910, but that was not paid.

Q. Were any assessments levied against either of these policies after the record of the levy of the assessment known as mortuary call 126 dated January 29, 1910? A. There were not.

Q. Opposite each of the preceding assessments on these records there appears in red ink certain figures as, for instance, opposite the immediately preceding assessment the red ink record, 12-06, and opposite the next preceding record 9-21, being in each instance in red ink, and you have testified that those are the records of the fact that the assessment referred to had been paid and is a record of the dates when they were checked up? A. That is right.

Q. Now, is there opposite the record, with respect to mortuary call 126, a notice of which was sent January 29, 1910, being the last record on Exhibit P in red ink entry, indicating the date when payment was made and checked up? A. There is not, as payment was never made.

Q. Did you during March, 1910, receive through the mail a paper purporting to be signed by Frank Barber, the original of which I now show you and a copy of which will be marked Defendant's Exhibit GG? A. We did.

Defendant offers copy of paper referred to in evi-

dence, which is hereto attached and marked Defendant's Exhibit GG.

Which is as follows:

EXHIBIT GG.

The Hartford Life Insurance Co.,

Gentlemen: Will you please inform me whether or not you have a better policy than the two which I have. Since I wrote you in December in regard to the increase of assessment, to which your answer is at hand, I have given my insurance matter a very serious thought. I came across a statement a few days ago, from May, 1906, after carefully reading it over the thought arose in my mind, "Can it be possible that after paying for nearly 20 years it is simply a matter of who dies first, the Company or the Policy-holder. As I do not wish to drop my policy, I would like to hear from the Company. Hoping you will favor me with an early reply, I am

Respectfully yours,
Frank Barber,
St. Louis, Mo.

4201 Pleasant Str.

Q. And did you make reply thereto, as per copy of your letter to Frank Barber dated March 12, 1910, which copy is now before you? A. We did.

Defendant offers copy of letter referred in evidence, which is hereto attached and marked Defendant's Exhibit HH.

Which is as follows:

EXHIBIT HH.

March 12, 1910.

Mr. Frank Barber,
4201 Pleasant St.,
St. Louis, Mo.

Dear Sir:

Replying to yours without date, we have to advise you that this company has since the year 1899 issued nothing but old line legal reserve level premium insurance. There is no way in which certificates 128293 and 174416 on your life could be changed to any other form of insurance than that on which they were originally written. You could, of course, apply for new insurance in this company, and we will be glad, indeed, to consider your application.

As for the condition of the company, we would state that the company is in a stronger financial condition than ever before. The statement of the condition of the company as of December 31st last is now in the press. When it is received from the printer we will take pleasure in forwarding you a copy.

Very truly yours,
T. F. Lawrence,
Secretary.

Q. Was the original of that mailed to Frank Barber? A. It was, on March 12, 1910.

Q. You have from time to time referred to the dividends allowed as a credit against assessments on the two policies in suit, and I ask you if the paper which I now show you is a compilation from your records of the amounts of dividends allowed from time to time and in the several years therein set forth to Frank Bar-

ber on account of certificate 174416? A. It is a copy of the record of dividends so allowed him.

Defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit JJ.

Which is as follows:

EXHIBIT JJ.

Certificate No. 174416 on Life of Frank Barber.
Dividends in Reduction of Calls.

Call Due.	Amount of Dividends.
March 1st, 1901	$ 1.00
September 1st, 1901	1.50
March 1st, 1902	1.14
September 1st, 1902	1.24
March 1st, 1903	1.34
September 1st, 1903	1.40
March 1st, 1904	1.10
September 1st, 1904	1.20
March 1st, 1905	1.30
September 1st, 1905	1.20
March 1st, 1906	1.40
September 1st, 1906	1.50
March 1st, 1907	1.20
September 1st, 1907	1.30
March 1st, 1908	1.20
September 1st, 1908	1.20
March 1st, 1909	1.30
September 1st, 1909	1.20
Total	$22.72

Q. And the amount of dividends allowed and credited to him in reduction of his assessments on certificate 174416 was how much? A. $22.72.

Q. And those dividends so allowed and credited to him constitute a part of the disbursements from the income and accretions received from the security com-

pany as shown by Exhibit FF heretofore introduced in evidence? A. They do.

Q. The paper which I now show you and which will be marked Exhibit KK is a certified copy, is it not, of the Act of the General Assembly of Connecticut, approved April 10th, 1889? A. Yes, it is a copy of House Joint Resolution No. 176 of the General Assembly, State of Connecticut, approved April 10th, 1889.

Q. And relates to the safety fund investment? A. Yes, it relates to the investment of the safety fund by the security company, the trustee of the fund.

Defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit KK; which is as follows:

EXHIBIT KK.

Exhibit copy of Act of Legislature approved April 10, 1889, provided as follows:

That the Security Company, a corporation located in Hartford, be and it is hereby authorized to invest the funds known as the safety fund, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between said companies dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders of certificates of membership in said Hartford Life and Annuity Insurance Company, in such other securities, in addition to United States bonds, as the life insurance companies of this State are by law authorized to invest in, instead of being compelled to invest all said funds in United States bonds as specified in said contract; provided, such invest-

ments of said funds in other securities than United States bonds shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided further, that nothing in this resolution shall be so construed as in any way to vary, alter, or change the purposes, conditions, or stipulations of such trust as set forth in said contract, except as to the kind of securities in which the same may be invested.

Approved April 10, 1889.

Q. Into what fund did the moneys received from assessments levied against and paid by the members of the safety fund department, men's division, go when they were received? A. Into the mortuary fund of the men's division of the safety fund department of the company.

Q. Who held the mortuary fund, being the proceeds of the assessments levied against the members of the safety fund of the men's division? A. The Hartford Life Insurance Company held that fund, to be used for the settlement of death claims only on certificates of the men's division of the safety fund department.

Q. And where was that fund kept? A. That fund was kept, a small part of it in cash in the company's office, and the balance in banks subject to check for the settlement of death losses.

Q. And the part of the fund that was in the bank was in whose name? A. In the name of the Hartford Life Insurance Company Safety Fund Department, Men's Division.

Q. And was withdrawn on whose check? A. On the check of the Hartford Life Insurance Company, signed by two officers of the company, in settlement of death claims, daily or as they were paid.

Q. Now, what became of the contributions to the safety fund, being the ten dollar payments or installments thereof, provided by the safety fund contract? A. They were all deposited by the Hartford Life Insurance Company in the security company in accordance with the terms of the trustee's contract before mentioned in this testimony.

Q. And held by the security company in whose name? A. Held by the security company, trustee for the members of the safety fund of the Hartford Life Insurance Company, men's division.

Q. And subject to check, if at all, by whom? A. By the security company.

Q. Was the safety fund at any time subject to the check of the Hartford Life Insurance Company? A. It never has been, no.

Q. Now, all your questions and answers heretofore have related to the safety fund department and the men's division of the safety fund department, have they not? A. They have.

Q. You also had another department in your business known as the women's safety fund department? A. We had.

Q. When was that department established? A. That department was established in 1882 and prior to that time the women had been accepted as members of the department referred to in this testimony as the men's division of the safety fund department, but in 1882 a separate division, called the women's division, was established, which also established a separate safety fund in accordance with the terms of a trustee's contract which was dated the 30th day of June, 1882, and thereafter all women were accepted as members of the women's division of the safety fund department

and all men as members of the men's division of the safety fund department. The two divisions were kept entirely separate after that time, the deposits to the men's division going into the safety fund of the men's division, and the deposits to the women's division going into the safety fund of the women's division. They were also kept entirely separate in all other respects, the members of the men's division being assessed only for death losses occurring on members of that division, and the members of the women's division being assessed only for death losses occurring on members of the women's division. The assessments paid by members of the men's division went into the mortuary fund of the men's division, and the death losses of the men's division were paid out of the mortuary fund of the men's division. The assessments paid by members of the women's division went into the mortuary fund of the women's division, and the death losses of the women's division were paid out of the mortuary fund of the women's division.

Q. The terms and conditions under which the security company held the safety fund of the men's division appears in the copy of the contract attached to the policies in suit to which we have heretofore referred, does it not? A. It does.

Q. Now, the terms and conditions under which the safety fund in the women's division was created and held by the security company appear by the contract dated June 30th, 1882, relating to the women's division, does it not? A. It does.

Q. Is the paper designated "Trustee's Contract" appearing on the third page of the paper which I now show you, headed "Hartford Life and Annuity Insurance Company Policy, Women's Division", a cor-

rect copy of the contract between the Hartford Life Insurance Company and the security company with respect to the safety fund of the women's division? A. It is.

Defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit LL; which is as follows:

EXHIBIT LL.

POLICY FORM WOMEN'S DIVISION.

This form of policy was in substance as follows:

In Consideration of the representations, agreements and warranties made in the application herefor, and of the admission fee paid; and of the sum of ten dollars, on each $1,000 of the indemnity herein provided for, to be paid to said company, as herein required, to create a safety fund as hereinafter described, and of three dollars per annum on each $1,000, for expense dues, to be paid as hereinafter conditioned, and of the further payment of all mortality calls proportioned to the indemnity herein provided for, levied against the herein named member to form a mortuary fund for the payment of all indemnity matured by deaths of members, which mortality calls, to be levied upon all the members in the division wherein this certificate is issued whose certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity at the dates of such deaths, with due allowance for discontinuance of membership, does hereby issue this certificate of membership in the women's division of its safety fund department

to..... (herein called the member) of....., County of....., State of....., with the following agreements:

That ninety days from the receipt by the president or secretary of said company of satisfactory proofs, in accordance with forms furnished upon notice of death and with full information as to the manner and cause, of the death of the herein named member while this certificate is in force, all the conditions hereof having been conformed to by the member, upon presentation and surrender of this certificate properly receipted, there shall be due and payable, out of the aforesaid mortuary fund and not otherwise, the indemnity of .....dollars (less the balance unpaid, if any, of the stipulated contribution to said Safety Fund, with fifty per cent added, together with the unpaid installments of annual expense dues and any mortality or other charge against the member payment of which is not matured), to.... .....legal representatives, or, wholly or in part, to such other person or persons as the member shall direct by a written order delivered to said company's president or secretary prior to the decease of the member, which order shall distinctly set forth to whom and how much shall be so paid. But the member shall have no power thus to dispose of any part of the avails of this certificate that shall have been legally assigned to any person to secure payment of an actual and provable debt of the member due to such assignee. All such payments to be made at the Home Office of said company in lawful money of the United States.

That said company will deposit said sum of ten dollars, when received, with the trustee, named in a contract made with them (of which a copy is printed hereon and made a part of this contract), as a safety fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years, if said safety fund shall then amount to seventy-five thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, *pro rata* among all the holders of certificates in force in said division at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said fund, by applying the same to the payment of their future dues and assessments; and that, whenever said fund shall amount to two hundred and fifty thousand dollars, all subsequent receipts therefor shall be distributed by the said company in like manner as the interest. Said company further agrees that if at any time it shall fail by reason of insufficient membership to collect the necessary sum to make full payment of the maximum amount named in any certificate issued in said division, and such certificate, after demand upon said company, shall be presented for payment to said trustee by the legal holder thereof (within the time herein stipulated for limitation of action), or if a final judgment shall have been obtained in any court of competent jurisdiction upon a claim arising under any such certificate, satisfaction of which shall have been neglected or refused for the period of sixty days from the decree thereof, then in either of such cases it shall be the duty of said trustee to at once convert said safety fund into money and distribute the same (less the

reasonable charges and expenses for the management and safe keeping of said fund) among the holders of all certificates then in force in said division, or their legal representatives, in the proportion which the amount contributed to said fund upon each of said certificates shall bear to the whole amount of said fund; and that in such event it shall file with said trustee a correct list, under oath, of the names, residences and amounts of the certificates of all members entitled to participate in such distribution.

And said company further agrees that so long as any certificate of membership in said division shall remain in force, said fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

And said company further agrees that the aforesaid mortuary fund shall be in no wise chargeable or liable for any use or purposes other than for the settlement of death claims, except as herein mentioned.

2. Of Payments.—The member agrees to pay to said company, for expenses, dues of three dollars per annum on each $1,000 indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; or by *pro rata* installments of the same, in advance, for periods of less than a year: And also agrees to pay said company, within thirty days from day on which notices bear date, all mortality calls determined as within set forth; the proceeds of which, less such charges as are herein prescribed and ten cents on each call for cost of collection, shall form the mortuary fund: And further agrees to pay said company during the first year of membership the sum of ten dollars on each $1,000 towards the

safety fund, either in a single payment on the first day of the month after date of issue, or by *pro rata* installments thereof, in advance, together with and in the same fractional parts as the first year's dues are paid; and, while the whole or any portion of such required payments shall remain unpaid, said company may apply toward payment thereof any unapplied sum standing to the credit of this certificate: But if the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax; and the proceeds of such mortality calls shall be charged with the member's proportionate share of fees actually paid by the company for medical examinations made in the first year of the membership hereby granted. All of which payments are to be made directly to the Home Office of said company, and not to agents, who are unauthorized to receive them.

3. Conditions of Acceptance.—The member further agrees and accepts this certificate upon the express condition that if either the annual dues mortality calls, or safety fund deposit, as hereinbefore required, are not paid to said company on the day due, then this certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the safety fund: And that failure to make the stipulated payments shall absolutely terminate the member's liability therefor: And that if any final division from said safety fund, as hereinbefore provided, shall be made by the trustee thereof on account of this certificate: then, and in all such

cases, all liability of said company and of its safety fund, on account of this certificate, shall cease.

Attached to this exhibit was the following

TRUSTEES' CONTRACT.

This Agreement, made and entered into this thirtieth day of June, A. D. 1882, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; Witnesseth:

Whereas, The party of the first part purposes to issue to persons contracting therefor, certificates of membership in a special department of its business to be known as the women's division of the safety fund system, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such certificate for the purpose of creating a safety fund in connection therewith, to enter into sundry agreements with such persons in the following words, to-wit:

"That said company will deposit said sum of ten dollars, when received, with the trustee, named in a contract made with them (of which a copy is printed hereon and made a part of this contract), as a safety fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1882, if said safety fund shall then amount to seventy-five thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual distribution of the net interest received therefrom by it, *pro rata* among all the holders of certificates in force

in said division at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said fund, by applying the same to the payment of their future dues and assessments; and that, whenever said fund shall amount to two hundred and fifty thousand dollars, all subsequent receipts therefor shall be distributed by the said company in like manner as the interest.

"Said company further agrees that if at any time, after said fund shall have amounted to seventy-five thousand dollars, or after five years from January 1, 1883, if that amount shall not have been attained before the expiration of that period, it shall fail by reason of insufficient membership to collect the necessary sum by assessment to make full payment of the maximum amount named in any certificate issued in said division, and such certificate, after demand upon said company, shall be presented for payment to said trustee by the legal holder thereof (within the time herein stipulated for limitation of action), or, if after the expiration of said period, a final judgment shall have been obtained in any court of competent jurisdiction upon a claim arising under any such certificate, satisfaction of which shall have been neglected or refused for the period of sixty days from the decree thereof, then in either of such cases it shall be the duty of said trustee to at once convert said safety fund into money and distribute the same (less the reasonable charges and expenses for the management and safe keeping of said fund) among the holders of all certificates then in force in said division, or their legal representatives, in the proportion which the amount contributed to said fund upon each of said certificates shall bear to the whole amount of said fund; and that in such

event it shall file with said trustee a correct list, under oath, of the names, residences and amounts of the certificates of all members entitled to participate in such distribution.

"And said company further agrees that so long as any certificate of membership in said division shall remain in force, said fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its certificate holders, as hereinbefore recited, does hereby appoint the party of the second part trustee as aforesaid and covenants and agrees with them and their successors in said trust to deposit with said trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every certificate of membership issued by it in the aforesaid division until said fund shall amount to two hundred and fifty thousand dollars, to be by said trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expense of said trust, to be paid over to the party of the first part, as hereafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said trustee shall pay the income, as above, to the party of the first part, or shall make any other payments from said fund, as required by the terms hereof, the liability of said trustee on the amount so paid shall cease; it being understood and agreed that said fund belongs to the party of the first part subject to the expressed trusts herein provided.

And the party of the second part, for themselves and their successors, in consideration of such deposits and of a reasonable compensation for their services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid certificates that they will receive, hold, manage and dispose of all said deposits made with them by the party of the first part, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its certificate holders.

That, as often as possible said trustee shall make investments of such funds in such securities as the statutes of the State of Connecticut shall permit to be made by life insurance companies, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1882, or until such time thereafter as such fund shall amount to seventy-five thousand dollars, par value, of the securities purchased for said fund, and shall pay over to the party of the first part, semi-annually thereafter, all the further income from said fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements. And, unless such default shall occur, will thereafter add to the principal of said fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole fund shall amount in such securities, at their par value, to two hundred and fifty thousand dollars: And in the event of the failure or neglect men-

tioned in the hereinbefore recited agreements, will convert said fund into money and distribute the same in accordance therewith as soon thereafter as it can reasonably be done.

All payments required hereby to be made to the party of the first part, to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the certificate holders by the party of the second part, to be made at the office of said trustee or of the successor in said trust.

The necessary expenses connected with the management of said fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said fund, which replies shall be made by the trustee to any person entitled to request the same by reason of an interest therein, and the actual cost of any judicial action needed to determine the legal status of said fund: All other expense to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all certificates of membership issued by the party of the first part in the aforesaid division have been legally settled and surrendered to it, or properly

canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said insurance company, and the balance of said fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that the securities, investments and moneys composing said fund shall at all reasonable times be subject to inspection by the Insurance Commissioner of the State of Connecticut, and by the proper officers of the Insurance Departments of all states where certificate holders may be obtained; and to inspection by the party of the first part, who shall keep the party of the second part correctly informed of the names, addresses, numbers and amounts of certificates of all persons who shall contribute to said fund.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new trustee may be appointed, by the mutual nomination of said insurance company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original trustee, and said party of the second part shall surrender said fund to such successor.

In Witness Whereof, the party of the first part has affixed hereto the corporate seal of said company and caused these presents to be signed by its president and secretary. And the party of the second part has hereto affixed its corporate seal

and its president and treasurer have hereunto set their hands. Done at Hartford, in the State of Connecticut, the day and year first above written.

Hartford Life and Annuity Ins. Co.,
(Seal) By Frederick R. Foster, President,
and Stephen Ball, Secretary.

Security Company,
(Seal) By Robert E. Day, President,
and William L. Matson, Treasurer.

Attached to this exhibit also was the following table and notes to the table:

TABLE

Of Graduated Mortality Ratios for Every $1,000 of Death Loss, on Each $1,000 of a Total Indemnity in Force of $1,000,000.

Age.	Ratio.	Age.	Ratio.	Age.	Ratio.	Age.	Ratio
15 to 21	$0.65	33	$0.91	44	$1.20	55	$1.92
22	.67	34	.94	45	1.22	56	2.03
23	.69	35	.97	46	1.25	57	2.15
24	.71	36	1.00	47	1.30	58	2.32
25	.73	37	1.03	48	1.35	59	2.50
26	.75	38	1.06	49	1.40	60	2.68
27	.77	39	1.09	50	1.47	61	2.86
28	.79	40	1.12	51	1.54	62	3.08
29	.81	41	1.14	52	1.63	63	3.30
30	.83	42	1.16	53	1.72	64	3.65
31	.85	43	1.18	54	1.81	65	4.00
32	.88						

NOTES TO THE TABLE.

1. These ratios decrease in proportion as the total indemnity in force increases above $1,000,000 in amount, and are calculated so as to cover the stipulated cost of collection.

2. When the total indemnity in force does not exceed $250,000, the ratio is to be four times the tabular ratios given above.

3. When the total indemnity in force is less than $1,000,000 and more than $250,000, the maximum ratio given in Note 2 diminishes in exact proportion to the increase of such total indemnity over $250,000.

Remark.—The ratios set forth in Notes 2 and 3 are so calculated as to raise enough from mortality calls, whenever the total indemnity in force exceeds $250,000, to meet death losses up to the maximum limit of benefit named in certificates. The higher ratios thus established will be offset by the occurrence of proportionately fewer death losses on the lesser amounts of total indemnity to which such ratios apply, and are so adjusted that with a smaller indemnity in force the maximum benefit is met with no greater cost for mortality calls over each yearly period of membership than when a larger indemnity is in force.

Court here takes a recess until nine o'clock tomorrow morning.

Wednesday, November 26th, 1913.

Continuation of Lawrence Deposition.

Q. Now, then, in the women's division did you have a mortuary fund created by assessments levied on the members of that division? A. We did.

Q. And with respect to what you have designated as your seven year contract, stipulated premium contract, being forms 3½ and 4, did you accumulate and hold in a separate fund, from time to time, the difference between the death losses on those policies and the premiums or stipulated payments which they paid

during the first seven years? A. We did as to the form 4, yes; on the form 3½ we had a separate account and have a separate account for the payments made by those certificate holders, charging against them the payments stipulated in their contracts, including their assessments to the mortuary fund, holding the balance in that account.

Q. Does the paper which I now show you, and which will be marked Exhibit MM, is it a tabulation from your record of the balance on hand in the several funds referred to, to-wit, the men's mortuary fund, the women's mortuary fund, and the stipulated premium fund, that you have last described, on the last day of each year, beginning December 31, 1900, and running down to and including 1909? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit MM.

Which is as follows:

EXHIBIT MM.

Dec. 31, 1900.....	Men's Mort.....	$ 89,461.38
	Women's Mort...	21,903.20
	Stip. Prem.....	228,484.41
		$339,848.99
	Error	1,866.37
		$341,715.36
Dec. 31, 1901.....	Men's Mort.....	$ 88,868.99
	Women's Mort...	43,858.98
	Stip. Prem.....	224,292.62
		$357,020.59

	(Excess of assessments in course of Coll.)	21,550.00
		$378,570.59
Dec. 31, 1902.....	Men's Mort.....	$126,858.76
	Women's Mort...	41,622.73
	Stip. Prem.....	184,159.43
		$352,640.92
Dec. 31, 1903.....	Men's Mort.....	$136,450.23
	Women's Mort...	66,139.79
	Stip. Prem.....	101,791.81
	Int. Bnk. Bal....	1,710.16
		$306,091.99
Dec. 31, 1904.....	Men's Mort.....	$207,748.77
	Women's Mort...	68,695.14
	Stip. Prem.....	46,759.70
	Int. Bnk. Bal....	1,112.65
		$324,316.26
Dec. 31, 1905.....	Men's Mort.....	$103,919.88
	Women's Mort...	74,881.63
	Stip. Prem.....	46,508.67
	Int. Bnk. Bal....	243.84
		$225,554.02
	D. Claims.....	4,166.67
		$221,387.35

Dec. 31, 1906.....	Men's Mort.....		$163,927.48
	Women's Mort...		51,049.84
	Stip. Prem.....		38,430.30
			$253,407.62
	Death Claims.....	$4,166.67	
	Div. Over-paym.....	1,885.72	6,052.39
			$247,355.23
Dec. 31, 1907.....	Men's Mort.....		$224,392.04
	Women's Mort...		65,398.70
	Stip. Prem.....		37,278.07
			$327,068.81
	Death Claims.....	$1,166.67	
	Div. Over-paym.....	4,533.20	5,699.87
			$321,368.94
Dec. 31, 1908.....	Men's Mort.....		$ 99,309.31
	Death Claim.....		166.67
			$ 99,142.64
	Women's Mort...		66,387.65
	Stip. Prem.....		38,737.46
			$204,267.75
Dec. 31, 1909.....	Men's Mort.....		$ 74,938.92
	Death Claim.....		166.67
			$ 74,772.25
	Women's Mort...		84,155.38
	Stip. Prem.....		39,685.89
			$198,613.52

Q. On December 31, 1909, what was the balance in the mortuary fund, men's division? A. $74,938.92.

Q. Was there a past due and outstanding death claim against that fund? A. There was a death claim amounting to $166.67, which was overdue and unpaid and had been for some years, for the reason that the beneficiary had disappeared and could not be found. As that death claim was overdue and had been assessed for, and as the unpaid amount had been charged in the company's statement as a liability December 31, 1909, as against the mortuary fund, the actual balance in the mortuary fund, as reported in the company's statement December 31, 1909, was reduced by that amount.

Q. Now, according to your records, a copy of which you have here, the balance in the men's mortuary fund was on that date how much? A. The amount shown in Exhibit MM.

Q. The words "Men's Mort." as they appear on this Exhibit MM indicate what—what fund? A. They indicate the balance in the men's mortuary fund.

Q. Now the words "Women's Mort." indicate what? A. The balance in the women's mortuary fund.

Q. And the words "Stip. Prem." indicate what? A. Indicate the balance in the stipulated premium fund.

Q. About when was it that the safety fund in the men's division of the safety fund department aggregated $1,000,000 par value? A. At the end of 1893.

Q. And has it ever exceeded $1,000,000 par value? A. Never.

Q. After it reached $1,000,000 par value what was done with the contributions of the $10 payments or installments thereof, that were paid by members to the Hartford Life Insurance Company? A. The Hartford

Life Insurance Company has always sent those contributions to the Security Company, and the Security Company, after the fund reached its limit of $1,000,000 par value, returned those deposits made to the fund, together with the income, to be allowed to the members as reduction of dividends in accordance with the trustee's contract.

Q. And on Exhibit EE it appears that the Hartford Life Insurance Company deposited with the Security Company a total of $1,290,113, and the excess of the amount so paid by the Hartford Life Insurance Company to the Security Company, after the safety fund in the men's division reached $1,000,000 par value, came back to the Hartford Life Insurance Company how and when? A. It came back in semi-annual payments by the Security Company at the same time that they paid the income of the fund, and went on to the safety fund dividend account of the Hartford Life Insurance Company, to be apportioned and paid to the members of the men's division, safety fund department of the company, in accordance with the terms of the trustee's contract.

Q. And was all of the money so received, being both the income as well as the payments to the *corpus* of that fund, after it exceeded $1,000,000, when thus returned by the Security Company to the Hartford Life Insurance Company, in fact distributed in dividends to the members? A. Yes; it was all apportioned to the members with the exception of a balance shown on an exhibit which has previously gone into this case, was all paid to the members.

Q. What was the balance undistributed December 31, 1909? A. The balance on December 31, 1909, undistributed, was $19,447.39. Of that $19,020.70 was

apportioned in reduction of call due March 1, 1910; all of the income and accretions of the safety fund received from the Security Company applicable to dividends to members of the men's division of the safety fund department either has been so paid to them or is held in account apportioned and to be paid to them.

Q. By the terms of the trustee's contract concerning the safety fund, women's division, of date the 30th day of June, 1882, the limit of the fund therein fixed is $250,000. Will you please state whether the safety fund in the women's division has ever exceeded $250,000? A. It not only has never exceeded $250,000, but it has never reached it; it never has reached $150,000 par value.

Q. By the terms of the trustee's contract concerning the safety fund, men's division, a copy of which contract appears on the certificates in suit, it is provided that that fund shall be invested in United States bonds. Was that fund always invested in United States bonds? A. It was until after the passage of the Act of the Legislature of 1889, a copy of which act has been introduced in this case as an exhibit. After that time it was not invested in United States bonds, but in investments which were legal for life insurance companies under Connecticut laws.

Q. Was the subject of the safety fund, men's division, the subject of litigation in this State in the case known as Dresser and others against the Hartford Life Insurance Company?

Mr. Morrow: I object to that; the record is the best evidence. I don't think this man has got a right to say what was the subject of litigation, and it is immaterial what they are attempting to prove.

By the Court: The record, of course, would be the best evidence of what it contained. Have you the record here?

By Mr. Suddath: The record will be offered at the proper connection.

By the Court: I think if you have the record, it is the best testimony. Objection sustained.

Defendant excepted at the time.

Q. I hand you two papers, which will be marked, respectively, Exhibits NN and OO, the first being a copy of decision and decree entered in the Dresser case by Judge Shumway, and the second being copy of a decision and decree entered in the Dresser case by Judge Curtis, both of which have been certified by the clerk of the court, and ask you whether those are copies of the decrees in that case?

Same objection by plaintiff.

By Mr. Suddath: We have the record here, and we will reserve the offer on this question and answer and those exhibits, and we will withdraw that question, with the understanding we will offer it again before we close.

Q. When in the ordinary course of business would the payment of the substance or the bulk of mortuary call 126 be made, Mr. Lawrence? A. Between March 1st and March 15, 1910.

Q. Under the terms of the contract and notice, the date of the call being January 29, 1910, the last date for payment provided in the call was what date, regardless of any provisions for extension? A. March 5, 1910, except for those residing west of Salt Lake, Utah, in which case the date was March 15, 1910.

Q. On the back of Exhibits Nos. L and M, being the notice of mortuary call 126, appears the following: "Special Notice. If the payment of the above quarterly call is not received at this office on or before March 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policy-holder by registered letter, giving until March 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents." Did that indorsement go to all of the members of the safety fund on that notice? A. To every one.

Q. And had that provision for the payment within fifteen days after the last due day been a rule of the company of long standing? A. It had.

Q. And was that rule thus allowing fifteen days additional printed on the back of all of the notices sent to members on their several assessments for a number of years? A. That rule allowing fifteen days for unconditional reinstatement upon the payment of fifty cents additional had been, yes.

Q. And the only place that it appears is on the back of the notice as it appears on the back of this notice? A. That is the only place that it appears in writing, in present usage, yes.

Q. Did it appear anywhere else in writing? A. It appeared in a circular letter. My recollection is that at the time the rule was adopted a circular letter was sent to all the certificate holders.

Q. Well, the terms and conditions of the rule appear in the indorsement which I have just read? A. They do.

Q. Was it pursuant to that rule that you sent to

Barber in these cases the two registered letter notices about which you have testified? A. It was.

Q. The call here in question, being mortuary call 126, of January 28th, was payable March 1st or March 5th as recited in the notice. When, according to the terms of the certificates in suit, would the next assessment following call 126 be levied? A. The next call would be levied on conditions existing March 31st, 1910, and would be levied May 2nd, 1910, that is the notice would be dated that date and it would be due on June 1st, 1910.

Q. And the returns of that call, the substance or bulk of the returns of that call would come in about what date? A. From the first to the fifteenth of June.

Not being able to complete the taking of said deposition by reason of the lateness of the hour I adjourn the further taking of the same until Wednesday, September 18th, at 9:30 a. m.

Nellie W. Annis,
Notary Public.

Pursuant to adjournment, as above stated, on the 18th day of September, 1912, at the hour of 9:30 a. m. I continued the taking of said deposition as follows:

Thomas F. Lawrence, in continuation of his deposition commenced on the 17th day of September, A. D. 1912, on his oath further says:

Q. After the passage of the Act of the Legislature, which is offered in evidence as Exhibit KK, you testified yesterday that the safety fund was invested by the Security Company in such class of securities as the laws of the State of Connecticut provided might be proper for the investment of insurance companies. Just what class of securities was the fund invested in after that

date? A. In railroad and municipal bonds and some mortgage loans.

Q. Can you tell me what the effect upon that fund was with respect both to its reaching the maximum sum of one million dollars par value, at an earlier or later date by investment in that class of funds instead of United States bonds, and also the effect upon the income of that fund? A. The fund, by reason of being invested in such securities as were legal for life insurance companies, rather than United States bonds, reached its limit of one million dollars par value very much earlier than would have been the case had it remained in United States bonds. The income has been very much larger from the fund than it would have been if invested in United States bonds.

Q. Why was it that it reached its maximum of one million dollars par value at an earlier date when invested in one class of securities than it would have reached that sum if it had been invested in United States bonds? A. Because United States bonds command a high premium, and it would have taken a much greater book value or amount of deposits to reach the par value of one million dollars in United States bonds than if invested in other securities which did not have to be purchased at such a high premium.

Q. Do you know what the premium was at this time on United States bonds? A. Not without looking it up.

Q. Do you know what was the interest rate of United States bonds? A. I think about 3 per cent.

Q. And what was the interest rate on municipal, railroad and other bonds in which insurance companies were authorized to invest, as compared with the in-

terest rate on United States bonds? A. About 5 per cent as compared with three per cent.

Q. You have said that you did not know what the premium on United States bonds was in 1889 or 1890. Can you tell us about what it was? A. It was about 20 per cent; in fact it was more than 20 per cent.

Q. You have testified that the interest rate on these municipal, railroad and other bonds was about 5 per cent as compared with 3 per cent on Government bonds. Do you know what the effect of that has been on the dividends paid to the members of the men's division of the safety fund department, and if so state what the effect was. A. I do; the effect was a benefit to the members of the safety fund department, men's division as they received the interest in the form of dividends, and the interest from 1889 or 1890, after the fund was invested in other securities than United States bonds, was in excess of $200,000 dollars more than it would have been if the fund had remained in United Sates bonds. The members of the men's division were also benefited by this change because of the fact that the fund reached its limit of one million dollars par value sooner than it would have done had it remained in United States bonds, and therefore the deposits which would have gone to pay premiums on United States bonds were returned by the security company to the Hartford Life Insurance Company and applied in the form of dividends.

Q. On December 31st, 19 9, the only funds held by the Hartford Life Insurance Company appertaining to the safety fund department was the mortuary fund of the men's division, the mortuary fund of the women's division, and your stipulated premium fund, and the balance then to the credit of the dividend account; is

that correct? A. Well, there was in addition to these accounts an advance payment account, where members had overpaid their assessments or deposited money with us to be applied on future assessments.

Q. Which advance payment account you held to the credit of individual members? A. We held it to their credit and it was on our books as a liability.

Q. The security company paid over to you the income of the safety fund how often? A. Semi-annually.

Q. On what dates? A. Recently on the 30th of June and the 31st of December. Prior to a few years ago it was paid on the 2nd of January and the 1st of July.

Q. Did the payments of the income by the security company to the Hartford Life Insurance Company on those dates include the payments of ten dollars per thousand made by the members, after the safety fund reached a million dollars in par value of the securities in which it was invested? A. It did.

Q. And did you receive a payment of income from such income and accretions from the security company December 31st, 1909? A. We did.

Q. In Exhibit FF you show an apportionment of $19,020.70 by way of dividends applicable on mortuary call 126. Did that apportionment include the amount which you had received from the Security Company on December 31st, 1909? A. It did.

Q. Now, those stipulated premium policies, are they capable of and do you charge against them the legal reserve calculated on that form of policy in your statements? A. We do on the stipulated premium policies or on the policies of the stipulated premium department, which are legal reserve policies and require the carrying of a legal reserve.

Q. Your stipulated premium fund, did that include

both reserve on those policies and a surplus on those policies in addition to the reserve? A. Yes, it did.

Q. Did the regular safety fund policies in the men's division of the safety fund department carry any reserve? A. Absolutely none.

Q. And the only policies in that department which did carry any reserve were what? A. Were the policies which by their terms were legal reserve policies. There are only two or three policies in force now in that department which carry a reserve and are either ten or twenty payment life policies.

Q. No reserve was charged on any policies except where policies contained a level or stipulated premium? A. That is right.

Q. When you apportioned your dividends by way of credit on each succeeding assessment levied against your policy-holders in the safety fund department, men's division, would all of the assessments so levied be paid and all of the devidends thus applied by way of credit be used in reduction of assessments, or would there be some of the policies which would lapse and thus the amount of dividend apportioned to them would not be used in reduction of their assessments? A. Always on every call some of the policies would lapse and have lapsed in the past, and therefore the amount of dividend apportioned to those policies is not taken in reduction of the assessment but remains in the dividend account.

Q. And what is done with the amount thus apportioned but unused from time to time? A. Well, it remains in the fund, and the next date of receipt of income and accretions from the security company the balance remaining is added to the income and accre-

tions and that balance is apportioned in reduction of the next call.

Q. In Exhibit FF the balance in the dividend account on December 31, 1909, is shown to be $19,447.39. Did that balance include all of the dividends theretofore apportioned to your members and not used by them in reduction of their assessments? A. Yes.

Q. And of that balance then on hand you apportioned at that time $19,020.70; is that correct? A. That is right.

Q. Did the company in any way realize any profit from the failure from time to time of the members to use or apply their dividend in reduction of their assessments? A. Absolutely none.

Q. Did you on each of the mortuary calls levied in this department assume a lapse ratio similar but differing in amount from the percentage of lapse assumed on mortuary call 126, which was 2.47 per cent? A. We did.

Q. And that lapse ratio varied in amount from time to time? A. Yes.

Q. And on each call? A. Yes.

Q. Now where the lapse ratio actually experienced was less than the lapse ratio assumed, what was the effect with regard to the amount received on that call as compared with the amount for which that call was levied? A. In that case we would receive on that call more than the amount for which the assessment was levied.

Q. What became of that excess? A. Why, that excess—all of the money received on that mortuary call would go into the mortuary fund for the settlement of death losses, and the excess would remain in that

fund to be used for that purpose and that purpose only —the settlement of death claims.

Q. Has it always remained there? A. Always.

Q. Now, where the lapse actually experienced on a given call was greater than the lapse rate assumed, what would be the effect on the amount of money actually received on the call as compared with the amount which was expected to be received by the call? A. The effect in that case would be that we would receive less in the way of assessments for the mortality call than the amount for which we had assessed, the amount of death losses included in the assessment.

Q. But the proceeds of the assessment, though for a lesser amount, would go into the mortuary fund? A. Yes, the proceeds of all assessments go into the mortuary fund, that is, that part of the assessment which is for mortality purposes.

Q. Now, these quarterly dues of $1.50 in one policy and 75 cents in the other policy for dues, did that go into the mortuary fund? A. No, never.

Q. What became of that money for dues? A. It went directly to the stock department.

Q. And from what fund were the death losses in the men's division of the safety fund department paid? A. From the mortuary fund of the men's division.

Q. Are the death losses in the men's department of the safety fund paid from the proceeds or any particular call or from the balance on hand in the mortuary fund from time to time? A. Not from the proceeds of any particular mortuary call but from the balance in the mortuary fund at the time that the death losses are paid.

Q. You have testified that the mortuary fund is deposited in banks in the City of Hartford. Do the banks

pay any interest on the balances in that fund from time to time? A. They do.

Q. And what is done with the interest that is received from the banks on those balances? A. It goes into the mortuary fund of the men's division.

Q. As a credit to that fund? A. Yes, sir.

Q. You have testified that in 1899 you ceased to write new business in the safety fund department. Will you please state why it was? A. It became practically impossible to write the business. In the early 90's many assessment companies and associations failed, and for that reason and also for the reason that the legal reserve companies were conducting a campaign of advertising in favor of legal reserve insurance, assessment insurance became very unpopular, and there was legislation in several states resulting from that unpopularity, which made it practically impossible to write the business. Four or five states I think prohibited writing assessment business entirely, but at any rate it was so unpopular that it was practically impossible to write it.

Q. Had there been prior to that time a great many assessment insurance companies? A. Yes, a very great many.

Q. Do you know of any company that is now operating under the assessment plan? A. I don't know of any. The Bankers Life Insurance Company of Des Moines, Iowa, operated until recently but I think during the last year they have gone over to the legal reserve plan.

Q. Whose particular duty was it to cause to be prepared and sent out the notices to members in the men's division of the safety fund department in 1909?

A. The duty of Mr. C. W. Benton, the cashier of the company.

Q. Under your supervision? A. Yes.

Q. Is Mr. Benton in the city now? A. He is not, he is away on his vacation and will not be back until week after next.

Q. What was the total amount of the payment of Barber on account of the safety fund, on policy 128293? A. Ten dollars.

Q. What was the total amount of Barber's payment to the company for the safety fund on account of his policy 174416? A. Twenty dollars.

Q. Do you know when the funds in which the safety fund, men's division of the safety fund department, reached the limit of the par value of $1,000,000 of securities in which it was invested? A. It was either in December, 1893, or the very first part of 1894. I testified yesterday that it was the end of 1893.

Mr. Jones: Reserving the right to further examine the witness as to any matters which I may have overlooked, you may, Mr. Morrow, proceed with the cross-examination, but I want to add here that if there are any books, papers or records of the company, in the company's possession, that you want, they may be produced right here; we will be very glad to get them for you.

Mr. Morrow: I thank Mr. Jones very kindly for that, but I prefer that he offer the copies of any records that he thinks necessary in this case so that I may inspect them, as I am a stranger here and am in a hurry and cannot very well go into an accounting of their books.

Cross-Examination, by Mr. Morrow.

Q. How long have you been connected with the Hartford Life Insurance Company and the corporation that

operated under a different name before that? A. Since June 1, 1903.

Q. What did you first do for this corporation? A. I came here in a clerical capacity, June 1st, 1903, and handled various clerical work in the office.

Q. What did you first do? A. Well, I first had in charge the matter of policy loans, in the stock department.

Q. How long did you do that work? A. I did that work personally, revising the system and doing the work, probably six months.

Q. Then what did you do? A. Then in December, 1903, I was made assistant secretary of the company and after that time my duties were executive.

Q. And what particular duties did you perform as assistant secretary? A. I had charge of the office force and the office routine and signed various papers as an officer of the company.

Q. You looked after the correspondence, too? A. Yes, the correspondence.

Q. The fact is after you became assistant secretary you didn't do the drudgery of the working on the books of the company, carrying out figures and things of that kind? A. No, it was all done under my supervision; I didn't personally do the work.

Q. You didn't personally do it yourself? A. Yes, that is right.

Q. And neither did you personally fill out what you called death calls or assessment calls, after that time? A. By death calls what do you mean?

Q. Notice of assessment? A. No, I didn't personally; it was done under my supervision.

Q. I mean, while you were in charge of the depart-

ment you actually didn't do the work yourself? A. No.

Q. You had other and more important duties to perform in connection with your office as secretary, didn't you? A. I had no more important business than supervising that work.

Q. But necessarily the business was so large that you had to intrust that to clerks under you? A. That is right.

Q. That has been true all the way along, hasn't it? A. Yes, my work has been done by clerks under my supervision.

Q. And it is true now? A. Yes, it is true now.

Q. Now, the Hartford Life Insurance Company, under any name that it has ever gone, has been what is called a stock corporation? A. It has.

Q. What is its capital stock? A. At the present time $500,000.

Q. What was it in 1890? A. In 1890 I am quite sure it was $250,000.

Q. That stock if it declares a dividend, the dividend is paid to the holder and owners of the stock? A. Yes.

Q. And not to what you call members in the safety fund department? A. No.

Q. Now, the profit derived from this stock, if any, in the safety fund department, came from what source? A. There was no profit derived from the stock in the safety fund department.

Q. Well, did the corporation receive any revenue from the members of the safety fund department? A. It did; it received the expense dues stipulated in the safety fund contract.

Q. And the company kept those dues whether or not it exceeded the amount stipulated? A. Yes, those were

paid to the company in consideration of its paying the expenses.

Q. Now you say there was no profit to the stockholders? A. I didn't say so; I said there was no profit derived from the stock in the safety fund department.

Q. It was run practically for a number of years as a safety fund insurance company because you did no other business except that class of business? A. Well, at the time that the company was writing safety fund business there was in force old legal reserve business which had been written prior to 1880, and there was a stock department of the company in which that legal reserve business was carried.

Q. Since you established the safety fund department, away back in 1879 or 1880, you have issued in that department to men a number of different forms of policies, have you not? A. We have, different forms of certificates we call them.

Q. I use the term policy as indicating the same thing that you do by certificate. Now can you approximate how many different forms were used during that period? A. Well, by forms, exactly what do you mean?

Q. I mean just what I say. A. I should say about ten forms.

Q. Well, as a matter of fact, wasn't it about thirty? A. No, sir.

Q. Well, there might have been twenty or thirty? A. No, there were not. There was probably thirty to thirty-five different editions of certificate forms used in the safety fund department and those editions, a great many, were just reprints for the changing of two or three words, but really no change in the form,

or the manner in which the certificates would be treated. In saying ten different forms I mean different forms of certificates which differ in their terms and in their method of treatment as to payments.

Q. You simply draw the conclusion now that they didn't differ materially in legal effect although they differed in language? A. I know some of them did not differ at all and that they did not differ as far as we treated them by their terms.

Q. Have you furnished Mr. Jones with all those different forms of certificates that you issued? A. I have not, in this case.

Q. Well, why did you furnish him with simply these four particular forms out of something like twenty or thirty? A. I furnished him with those four particular forms out of ten forms because they were editions of the only forms which were included in and affected in any way the assessments.

Q. You left it to yourself and to Mr. Jones to determine whether or not they in any way affected the rights of the other members issued under different forms? A. Why, yes, and my knowledge of how the different forms affect the assessments in the membership in the safety fund department.

Q. How many different forms of certificates were issued in what you term the regular department of the men's safety fund department? A. You are calling forms what I call editions.

Q. You spoke of a great many forms yesterday, and you called them form 3, form 3½ and form 4, and for that reason I thought I could refer to them as forms? A. I am differentiating between forms and editions. Form 3, and form 3½ and form 4 are by their terms treated in a different manner from the original safety

fund certificates, in that way we call them forms and I call them forms now, but when you ask me now for all of the forms among the original safety fund certificate holders, we consider them all one form. There were editions of that form, but all treated exactly the same and in that way are one form.

Q. How many different editions did you issue in the men's safety fund department, of what you call the regular form, that differed from each other, that you treated in the same class and the members as the same? A. I couldn't give you the exact number now, but I should say ten. If you would like the exact number I can find it for you.

Q. And the wording and the English of these forms were different? A. Yes, in some cases, and in some cases only reprints.

Q. But you or the company determine in its own mind that the difference was not sufficient to in any way affect the members, and they treated them all alike? A. Yes, treated them all in accordance with their terms.

Q. No about how many of those contracts or certificates did you issue after you issued the Barber certificates? A. Of the original safety fund certificates? I don't think any; I think the next editions were on the form 3, form 3½ and form 4.

Q. When did you commence to issue forms 3, 3½ and 4? A. 1894.

Q. Well, the Barber certificates were written in 1890 and 1891, I believe? A. Certificate 128293 on Barber's life was issued in 1890, and certificate 174416 on Barber's life was issued in 1893.

Q. Now, what do you call the form of 1890 similar to the one the Barber certificate is written on? A. I

call that an original safety fund certificate on the edition of August, 1888.

Q. Now, did you ever issue a different edition of that original safety fund certificate between 1890 and 1893? A. I don't think so.

Q. You don't know now? A. No.

Q. Did you ever look to see? A. No, not for that particular reason. Probably I have looked to see for some reason. In looking over things in the past I have been over all editions of the safety fund department. I have been over them hundreds of times, probably, read them all through and familiarized myself with them.

Q. Now, as to the Exhibits B and C, which purport to be applications. When did you first see those papers and where? A. To the best of my recollection I probably saw those applications in March, 1910, when Frank Barber wrote to us and we replied to him. I am not sure that I did at that time, but I am quite sure that I did and that I answered in his letter, and if that is the case those applications were put on my desk on my requisition, from the files.

Q. When you stated to Mr. Jones that those were the papers on which those particular certificates were issued, you simply concluded yourself that was true because you found them with the papers? A. Yes, because they were brought from our vault where the original files are kept. Those are the foundation of our business, those are very carefully kept.

Q. You, of course, had no personal knowledge of the transaction yourself? A. Of the issuing of the certificates?

Q. Yes, and the receipt of the application. A. At that time, no.

Q. You have none now? A. Only that the application is in our vault where it has been kept ever since first received except when it has been taken out on my requisition.

Q. You have no personal recollection now about the receipt of that application at the office? A. No, I wasn't here then.

Q. Either the first application or the last application? A. No.

Q. You don't personally know anything about the issuance of the certificates on either application? A. From our records I do.

Q. I am asking personally? A. No, I wasn't here at the time.

Q. From your testimony I gather that you first issued what you call an original or regular safety fund certificate? A. That is right.

Q. And that later on you issued a different form of certificate in the men's department called sometimes in the evidence here seven-year certificates? A. Yes, form 4 certificates were seven-year certificates.

Q. Those seven-year certificates were what you have talked about here this morning as being a certificate of stipulated premium? A. Yes, stipulated premium certificates for seven years.

Q. But you put them in with the men's division of the safety fund department and worked them right along together, didn't you? A. When?

Q. From the time you issued them. A. Yes, they contained a copy of the trustee's contract of the men's division, and that contract provided for their paying $2.00 a year to the safety fund, which they did, so that they deposited $14.00 per thousand of insurance to the safety fund, whereas the original certificate holders in

the safety fund deposited only $10.00, and all of that $14.00 went to the holders of the original certificates because the safety fund was completed in 1894. These certificates not being issued until 1894 and the fund being complete, the accretions to the fund were returned to the company and apportioned to it by dividends the same as the income.

Q. Did any of the holders of those seven-year certificates die within the first year after you had commenced to issue them? A. They did.

Q. How much did the men pay who died the first year, into the safety fund? A. $2.00.

Q. What became of that $2.00? A. Like all deposits to the safety fund it went to the Security Company as soon as received.

Q. Did that person participate in the earnings of the safety fund department? A. By earnings do you mean income of the safety fund?

Q. Yes. A. They did in accordance with the terms of the trustee's contract which provided that all members should participate in the income and accretions of the safety fund five years after completing their deposits. As it took them seven years to complete their deposits they did not commence to participate until fourteen years from the date of issuing.

Q. But as I understand, they did participate in the interest received from the million dollars? A. No, sir; not until the end of fourteen years. The contract provided that no one should participate in the dividends from the income of the safety fund department until five years after the completion of the deposit on the particular certificate.

Q. Were these two-dollar payments deposited with

the Security Company immediately upon receipt of them? A. Yes.

Q. Was any interest earned upon that? A. Those payments were sent to the Security Company and returned by the Security Company in stated semi-annual periods to us and were immediately apportioned as dividends in addition to the income.

Q. Those two-dollar payments on those seven-year certificates? A. Yes, sir.

Q. What did you do with that two-dollar payment? A. Sent it to the Security Company as a deposit to the fund.

Q. Then it was sent back to you? A. Yes, sir.

Q. Then what did you do? A. Apportioned it to the certificate holders whose certificates were in force and who had completed their safety fund deposits five years previous to that date and so were entitled to participate in the apportionment of dividends from the safety fund income.

Q. About how many thousand dollars worth of insurance was written on this seven-year plan? A. I couldn't tell you that without consulting the records.

Q. When did you commence writing them? A. 1894.

Q. When did you quit writing them? A. 1899.

Q. Five years? A. Running for five years.

Q. When you had to make up the assessment on this seven-year policy between the years 1894 and 1899 what did you take into consideration? A. There was no assessment on the seven-year certificates until the end of the term of seven years.

Q. Was there a surplus or a deficit in that particular department covering those early years from that stipulated premium? A. There was a surplus.

Q. What became of that surplus? A. I read into the

record yesterday the provision in that contract which provided for the payment of the mortality on those seven-year certificates during the seven years. The surplus was applied in reduction of assessments on those seven-year certificates after the end of the seven years when they paid regular assessments to the safety fund department, and that surplus has been applied in that way.

Q. I didn't ask you what you read in the record yesterday. I asked you what became of that surplus; I wish you would state that to me. A. That is what I say. It was applied in accordance with the terms of the contract in reduction of assessments as they became due and paid on those seven-year certificates after the end of the term of seven years when they would be assessments in the safety fund department.

Q. How much of that surplus did you pay out the first year? A. I could only answer that by consulting the records.

Q. Then you personally don't know at this time? A. No, but I can furnish the information very easily by consulting the records.

Mr. Jones (Q.): Are you ready to consult the records if Mr. Morrow desires you to? A. I will be very glad to. We haven't any records here that we are not very glad to produce and let Mr. Morrow see and give him all the information of the office.

Q. The form of certificate issued to the women was always the same form? A. No.

Q. How many different forms of certificates did you issue to the women after that division was established? A. I should say 10.

Q. You have produced one and designated it Exhibit LL? A. That is right.

Q. After the seven-year period did you treat all the certificate holders or members of the men's safety department alike? A. I don't believe I could answer that question that way. If you ask me if they were treated the same as the original or regular certificate holders I could answer the question by stating that they were treated exactly alike except that the new or higher table of rates was used in computing their assessments and computing ratio, so that the effect upon the original or regular certificate holders was to lower the ratio and therefore the assessments by reason of the fact that these seven-year certificate holders paid a higher table of rates.

Q. Did they pay the same dues? A. They did not; they paid the dues stipulated in the contract.

Q. How did you apportion the expense of carrying on the business between these different certificate holders? A. We didn't apportion the expense of carrying on the business between the certificate holders; the certificate contracts provided for certain expense dues to be paid to the company in consideration of which the company was to pay all the expenses, which was done.

Q. Well, but you actually did take on another class after the issuance of those regular certificates and carry them along for a cheaper quarterly due than you did the others? A. No, their dues were higher.

Q. What were the quarterly dues on those seven-year certificates? A. $1.00 for $1,000 of insurance as compared with 75 cents on the original safety fund certificates.

Q. Well, there were some other expenses I understood you to say yesterday that were charged on assessments? A. I remember testifying to charging taxes on assessments.

Q. Is that all? A. That is all I recollect testifying to.

Q. Is that all the expense that was ever attached to the carrying on of this business except the quarterly dues? A. The question is not clear. The dues are not expenses, they are payments provided by the contract to be paid to the company in consideration of which the stock department pays the expenses of carrying on the business.

Q. The taxes are in the way expenses and those are assessed in accordance with the contract and paid from the safety fund department as they are demanded by the State Insurance Department? What I mean is, was there any other money exacted from the members other than the assessment for mortuary call and quarterly dues and taxes? A. There was not.

Q. Yesterday, when you testified that these certificates differed from each other you meant that the language and effect of the certificates were different? A. Yes, that they differed in their terms and provisions.

Q. Did you ever write a policy on the life of a woman after 1880, before you say there was a contract made with the Security Company about a women's department? A. We did.

Q. What became of them? A. Why, they became members of the regular safety fund department which was established in 1880, when they came in before 1882, and remained members of that division in accordance with the terms of the contract, that being what we designate men's division of the safety fund.

Q. Then the men's division of the safety fund department had women in it? A. It did, women whose certificates were issued prior to the establishment of the separate women's division.

Q. You don't know how many women were members

of that department? A. No, I don't, but I could find out by an inspection of the books.

Q. And so when you talk about a men's department and a women's department you have reference to certain certificate forms that were issued to them and not with reference to the sex? A. Well, the division in which they are is determined by their contracts, and since 1882 by the sex. Since 1882 all men on whose life certificates issued to them in the men's department, and all women who have certificates issued and have become members have certificates issued to them in the women's department of that company. Prior to that time all women who have certificates issued were issued in the men's division of the safety fund department of the company and remained members of that division.

Q. That Exhibit K that you took out of the book I want you to get for me. (Mr. Lawrence gets book.) You now have before you the original of Exhibit K in book form? A. That is right.

Q. Exhibit K is a copy of the record with reference to assessment 126? A. Yes.

Q. Who made the figures on this book, the pages with reference to call 126 from which you say Exhibit K was taken? A. A clerk in the actuary's department.

Q. You didn't see him make them? A. I saw him make the figures on the fourth page after the total assessment of one table rate on the form 3½ certificates.

Q. When did you see him do that? A. At the time he did it.

Q. When was that? A. In January, 1910.

Q. What day in January? A. I couldn't tell you now.

Q. About what time? A. I don't know, within the first five or six days of the month of January.

Q. You testified yesterday that assessment 126 was made to cover a number of death claims which you have stated were set out in Exhibit N. Have you any original memorandum of releases or receipts, or otherwise, to show the exact date of the payment of those claims or any of them? A. We have records and checks and receipts.

Q. How many, if any, do you know of the claims contained in Exhibit N were paid before you sent out the notices for assessment 126? A. I couldn't tell you that without consulting the records.

Q. About how many? A. Any answer I might give to that question would be a guess.

Q. I would like for you to give your best recollection, that is what I want. A. Well, the only way I could answer that question would be to go down and make an examination of the death claim registers and find out the dates on which those various death claims were paid.

Q. Don't you know as a matter of fact that a number of them had been actually paid and settled before you sent out the notices for assessment 126? A. Yes, I know that.

Q. What proportion? A. I could only tell you as a guess.

Q. Turn to Moses S. Austin (Mr. Lawrence has produced claim register). The date of the death is February 13, 1907. State when that claim was paid. A. That claim was paid September 29, 1909; $3,000.

Q. Please turn to your record and state at what date the claim of Benjamin F. Saunders was paid and the amount paid. A. That claim was paid December 24th, 1909; $10,000.

Q. Please state at what date the claim of Otis M.

Dye was paid and the amount paid. A. That claim was paid November 2, 1909; $10,000.

Q. Please state at what date the claim of K. H. Barnes was paid and the amount paid. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of M. W. Smith was paid and the amount paid. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of John F. Devine was paid and the amount paid. A. That claim was paid December 6, 1909; $5,000.

Q. Please state at what date the claim of Royal L. Loveridge was paid and the amount paid. A. That claim was paid September 22, 1909; $1,000.

Q. Please state at what date the claim of Chas. H. Morgan was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of D. C. Routzhan was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Thos. K. Lagare was paid and the amount paid. A. The correct name is Thomas K. Legare and that claim was paid December 6, 1909; $3,000.

Q. Please state at what date the claim of Samuel McBlack was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of H. D. Wood was paid and the amount paid. A. That claim was paid October 26, 1909; $1,000.

Q. Please state at what date the claim of F. D. Crawley was paid and the amount paid. A. That claim was paid December 27, 1909; $1,000.

Q. Please state at what date the claim of C. H.

Nolting was paid and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Thos. H. Davey was paid and the amount paid. A. That claim was paid December 6th, 1909; $1,000.

Q. Please state at what date the claim of T. F. Calvin was paid and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of Leopold H. Cohen was paid and the amount paid. A. That claim was paid November 22, 1909; $8,000.

Q. Please state at what date the claim of Patrick Sweeney was paid and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Jas. A. Creighton was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Henry Berkele was paid and the amount paid. A. That claim was paid November 17, 1909; $2,500.

Q. Please state at what date the claim of Fred Bisping was paid and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Henry D. Jarrett was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of B. F. Pickett was paid and the amount paid. A. That claim was paid October 27, 1909; $1,000.

Q. Please state at what date the claim of Simon Abler was paid and the amount. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Chas. E.

Stevens was paid and the amount paid. A. That claim was paid November 4th, 1909; $4,000.

Q. Please state at what date the claim of C. H. Strong was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Wm. L. McCabe was paid and the amount paid. A. That claim was paid October 14, 1909; $1,000.

Q. Please state at what date the claim of C. J. Green was paid and the amount paid. A. That claim was paid December 3, 1909; $5,000.

Q. Please state at what date the claim of John M. Patton was paid and the amount paid. A. That claim was paid December 14, 1909; $2,000.

Q. Please state at what date the claim of A. A. Albritton was paid and the amount paid. A. That claim was paid December 14, 1909; $1,000.

Q. Please state at what date the claim of Jacob A. D. Myers was paid and the amount paid. A. That claim was paid December 6th, 1909; $2,000.

Q. Please state at what date the claim of W. A. Lester was paid and the amount paid. A. That claim was paid December 23, 1909; $1,000.

Q. Please state at what date the claim of Wm. H. Bezanson was paid and the amount paid. A. That claim was paid December 4, 1909; $2,000.

Q. Please state at what date the claim of Alex. Neubecker was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Emil Beggren was paid and the amount paid. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of Henry

Sandhoff was paid and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Albert C. Eaton was paid and the amount paid. A. That claim was paid November 3, 1909; $1,000.

Q. Please state at what date the claim of Hawson H. Wallace was paid and the amount paid. A. That claim was paid December 30, 1909; $6,000.

Q. Please state at what date the claim of Adam Eppel was paid and the amount paid. A. That claim was paid December 1st, 1909; $1,000.

Q. Please state at what date the claim of Lucien Love was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of Jas. P Rielley was paid and the amount paid. A. That claim was paid December 1st, 1909; $1,000.

Q. Please state at what date the claim of Wm. H. King was paid and the amount paid. A. That claim was paid November 17, 1909; $1,000.

Q. Please state at what date the claim of Isaac Meinhard was paid and the amount paid. A. That claim was paid December 4, 1909; $10,000.

Q. Please state at what date the claim of Cyrus C. Marsh was paid and the amount paid. A. That claim was paid December 29, 1909; $4,000.

Q. Please state at what date the claim of William Bright was paid and the amount paid. A. That claim was paid December 1st, 1909; $5,000.

Q. Please state at what date the claim of Alfred M. Botsford was paid and the amount paid. A. That claim was paid December 9, 1909; $1,000.

Q. Please state at what date the claim of Jas. B.

Bunn was paid and the amount paid. A. That claim was paid November 29, 1909; $1,000.

Q. Please state at what date the claim of Lewis Raymond was paid and the amount paid. A. That claim was paid November 2, 1909; $2,000.

Q. Please state at what date the claim of Patrick Fahey was paid and the amount paid. A. That claim was paid November 2, 1909; $2,000.

Q. Please state at what date the claim of Wm. J. Allen was paid and the amount paid. A. That claim was paid December 3, 1909; $3.000.

Q. Please state at what date the claim of Bernard Hassler was paid and the amount paid. A. That claim was paid December 4, 1909; $500.

Q. Please state at what date the claim of Albert F. Jones was paid and the amount paid. A. That claim was paid October 22, 1909; $1,000.

Q. Please state at what date the claim of Moses C. Harrison was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Edw. T. Houghton was paid and the amount paid. A. That claim was paid February 16, 1910; $2,000.

Q. Please state at what date the claim of Jacob Wasen was paid and the amount paid. A. That claim was paid October 5, 1909; $2,000.

Q. Please state at what date the claim of Frederick A. Becker was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of R. B. Moodie was paid and the amount paid. A. That claim was paid October 13, 1909; $2,000.

Q. Please state at what date the claim of Giles F.

VanVechter was paid and the amount paid. A. That claim was paid October 28, 1909; $5,000.

Q. Please state at what date the claim of C. I. White was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of G. H. Allen was paid and the amount paid. A. That claim was paid December 28, 1909; $2,000.

Q. Please state at what date the claim of Peter Cavagna was paid and the amount paid. A. That claim was paid February 8, 1910; $5,000.

Q. Please state at what date the claim of Jerome B. Nichols was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of H. A. Barton, Jr., was paid and the amount paid. A. That claim was paid October 21, 1909; $2,000.

Q. Please state at what date the claim of John Loux was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of David McLaughlin was paid and the amount paid. A. That claim was paid December 1st, 1909; $4,000.

Q. Please state at what date the claim of Edw. L. Roberts was paid and the amount paid. A. That claim was paid December 30, 1909; $1,878.48.

Q. Please state at what date the claim of Louis Graf was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Wm. T. Perkins was paid and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Geo.

Pfeuffer was paid and the amount paid. A. That claim was paid July 6, 1910; $1,000.

Q. Please state at what date the claim of Thos. McPheters was paid and the amount paid. A. That claim was paid November 29, 1909; $3,000.

Q. Please state at what date the claim of John Colbert was paid and the amount paid. A. That claim was paid October 25, 1909; $1,000.

Q. Please state at what date the claim of Alfred E. Chanbers was paid and the amount paid. A. That claim was paid November 29, 1909; $5,000.

Q. Please state at what date the claim of P. H. Hull was paid and the amount paid. A. That claim was paid January 17, 1910; $1,000.

Q. Please state at what date the claim of William T. Leggett was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of P. P. Toale was paid and the amount paid. A. That claim was paid January 6, 1910; $5,000.

Q. Please state at what date the claim of Stephen W. Patterson was paid and the amount paid. A. That claim was paid December 4, 1909; $1,000.

Q. Please state at what date the claim of Ugel E. Rivest was paid and the amount paid. A. That claim was paid December 28, 1909; $1,000.

Q. Please state at what date the claim of Thos. Buchanan was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Caleb A. Post was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of John W. Kelmly was paid and the amount paid. A. The name

should be Helmly instead of Kelmly, and the claim was paid March 3, 1910; $1,000.

Q. Please state at what date the claim of Edw. Cahill was paid and the amount paid. A. That claim was paid December 6, 1909; $1,000.

Q. Please state at what date the claim of John A. Bradley was paid and the amount paid. A. That claim was paid December 29, 1909; $3,000.

Q. Please state at what date the claim of Ransom F. Cowing was paid and the amount paid. A. That claim was paid December 6, 1909; $2,000.

Q. Please state at what date the claim of Henry Penette was paid and the amount paid. A. That claim was paid December 20, 1909; $1,000.

Q. Please state at what date the claim of Michael Gleisner was paid and the amount paid. A. That claim was paid February 17, 1910; $1,000.

Q. Please state at what date the claim of Lewis J. Brown was paid and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of Daniel Woerner was paid and the amount paid. A. That claim was paid February 7, 1910; $2,000.

Q. Please state at what date the claim of William Miller was paid and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of F. Marcellus Cox was paid and the amount paid. A. That claim was paid February 28, 1910; $5,000.

Q. Please state at what date the claim of John Davis was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Charles

K. Minor was paid and the amount paid. A. That claim was paid December 6, 1909; $2,000.

Q. Please state at what date the claim of Justus Pfetzing was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Oliver Otis Howard was paid and the amount paid. A. That claim was paid, $5,000 on November 22, 1909, and $5,000 November 20th, 1909. The two certificates were to different claimants, I suppose.

Q. Please state at what date the claim of Marcus A. Hunt was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Charles H. Oyer was paid and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Benjamin Berwanger was paid and the amount paid. A. That claim was paid November 16, 1909; $5,000.

Q. Please state at what date the claim of Jno. F. D. Bettmann was paid and the amount paid. A. That claim was paid January 14, 1910; $1,000.

Q. Please state at what date the claim of Julius C. Kespohl was paid and the amount paid. A. That claim was paid December 29, 1909; $2,000.

Q. Please state at what date the claim of Wm. C. Carlisle was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Moses Prager was paid and the amount paid. A. That claim was paid December 31, 1909; $5,000.

Q. Please state at what date the claim of Ulysses F. Moss was paid and the amount paid. A. That claim was paid February 19, 1910; $7,000.

Q. Please state at what date the claim of Hugh McGinley was paid and the amount paid. A. That claim was paid December 31, 1909; $1,000.

Q. Please state at what date the claim of Albert W. Fisher was paid and the amount paid. A. That claim was paid March 10, 1910; $5,000.

Q. Please state at what date the claim of Patrick J. Quinn was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of John Gilligan was paid and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Riley T. Taylor was paid and the amount paid. A. That claim was paid December 30, 1909; $3,000.

Q. Please state at what date the claim of David U. Carson was paid and the amount paid. A. That claim was paid February 28, 1910; $1,000.

Q. Please state at what date the claim of Chas. Weiland was paid and the amount paid. A. That claim was paid December 30, 1909; $2,500.

Q. Please state at what date the claim of William A. Meroney was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of T. J. Doak was paid and the amount paid. A. That claim was paid December 29, 1909; $2,000.

Q. Please state at what date the claim of Otto Buchel was paid and the amount paid. A. That claim was paid February 18, 1910; $5,000.

Q. Please state at what date the claim of Wm. H. Allen was paid and the amount paid. A. That claim was paid December 30, 1909; $5,000.

Q. Please state at what date the claim of Erastus

Whiton was paid and the amount paid. A. That claim was paid December 14, 1909; $1,000.

Q. Please state at what date the claim of William O. Standish was paid and the amount paid. A. That claim was paid February 24, 1910; $2,000.

Q. Please state at what date the claim of Chas. A. Stewart was paid and the amount paid. A. That claim was paid February 18, 1910; $2,000.

Q. Please state at what date the claim of John W. Jenner was paid and the amount paid. A. That claim was paid December 29, 1909; $15,000.

Q. Please state at what date the claim of J. E. Hatcher was paid and the amount paid. A. That claim was paid February 9, 1910; $1,000.

Q. Please state at what date the claim of Frank J. Lockwood was paid and the amount paid. A. That claim was paid February 28, 1910; $1,000.

Q. If I have not made a mistake in the account, all of these claims except fifteen were paid before the sending out of the notice of this assessment. Now, where did the company get the funds to pay those claims? A. Why, the claims were paid out of the mortuary fund, and the funds in the mortuary fund were collected by assessment on the members by the death losses.

Q. Now, you didn't have any of assessment 126 in your hands before you sent out the notices, did you? A. We did not receive any of it before we sent out the notice.

Q. So that the company had some funds in its hands that were sufficient to pay and did pay all of those claims except the ones indicated as paid after the notice? A. Yes, those claims were paid out of

the mortuary fund, as all claims are paid in the men's division of the safety fund department.

Q. Do you recall now the exhibit that showed the condition of the mortuary fund on December 31, 1909? A. There are two exhibits that show that, MM and II.

Q. That mortuary fund had been reduced on the date of December 31, 1909, by the payment of these claims that you have indicated were paid before that date? A. Yes, they had been paid out of the mortuary fund.

Q. Now, after the payment of all the claims that you say were paid before December 31, 1909, what was the amount or balance left in the mortuary fund for the purpose of paying death claims? A. Seventy-four thousand odd dollars. I can give you the exact amount if you will let me look at the exhibit: $74,938.92.

Q. As a matter of fact when the notices were sent out for this assessment there was sufficient money in the mortuary fund to pay every death claim listed in this Exhibit N, was there not? A. No, there was not.

Q. Well, how much did it lack of being sufficient to pay the claims listed? A. About $250,000.

Q. As I understand from your testimony you had actually paid all but about 15 of those claims before December 31, 1909, out of funds in your hands, is that correct? A. That is right.

Q. Then, how did it take $250,000 more to pay those 15 claims? A. I didn't say it did.

Q. Did it? A. No, it didn't to pay the unpaid ones, but you didn't ask me the question that way. You asked me if there wasn't enough money in the mortuary fund on the date of the notice, which was Jan-

uary 29th, to pay all of the claims listed there, which was $352,000, and there was not.

Q. What I aimed to say to you, after you had paid so many of them up to December 31st, didn't you actually have enough money as a balance to pay these other fifteen claims at the time you sent this out? A. I couldn't answer that because I have not before me the balance in the mortuary fund, January 29th; the records only show the unpaid claims that there were on December 31st and the amount in the mortuary fund December 31st.

Q. I understood you to testify on December 31st you actually had a balance in the mortuary fund, something over $74,000? A. That is right.

Q. If, as a matter of fact, you had paid all the death claims listed in Exhibit N except fifteen before December 31st, 1909, then the balance on hand of over $74,000, as testified to by you, was sufficient to pay the other fifteen, was it not? A. Yes, if we had deemed it advisable to pay those claims and if papers had been completed so that we could pay them.

Q. What I mean is, you actually had funds in your hands sufficient to pay them? A. Yes, if in the judgment of the officers it seemed best to pay them.

Q. How many kinds of funds have you with reference to the men's safety department, and I mean, of course, how many had you on December 31st, 1909, that is the time I am inquiring about now? A. Five, not separating the stipulated premium funds.

Q. What did you call them? A. The mortuary fund, the stipulated premium fund, the advanced payment fund, the dividend fund, and the tax fund.

Q. From what source did the money that consti-

tuted the mortuary fund on that date come? A. From the assessments on the members to pay death losses.

Q. Did any of it come from accumulations and interest? A. Yes, and from the interest on the bank balances to which I testified this morning.

Q. You have referred to an exhibit which you claim showed the condition of the mortuary fund as of date December 31st, 1909. A. Yes, Exhibits II and MM.

Q. From this exhibit I notice that you state that on December 31st, 1909, in the men's mortuary fund was $74,938.92. A. That is right.

Q. Then you deduct from that death claims, $166.67, leaving a balance of $74,772.25? A. That is right. The death claim of $166.67 was a death claim overdue and unpaid because the beneficiary was missing. The death claim had been assessed for and collected and it was charged as a liability against the funds, and the balance in the mortuary fund was reduced by that amount.

Q. Did you ever pay this $166.67; has it since been paid? A. It has.

Q. Where was this money on December 31st, 1909? A. Most of it was in the Hartford National Bank, the first National Bank, the State Bank, of Hartford, Connecticut.

Q. It was to the account of the Hartford Life Insurance Company? A. The safety fund department.

Q. At that time had you collected the interest due upon moneys from the Security Company? A. Yes, December 31st, 1909, we received from the Security Company interest and accretions on the safety fund.

Q. Is that included in this money? A. No, sir; it should not be, that is the mortuary fund you have there; that is the dividend account.

Q. How much interest did you receive from the Security Company about December 31st, 1909? A. Twenty thousand five hundred odd dollars.

Q. On that date that was available to pay death losses, was it not? A. No, sir; it was not. If you will look at Exhibit FF you will note that the balance in the dividend account on December 31st, 1909, was $19,447.39, although on that date we received from the Security Company twenty thousand five hundred odd dollars, that balance in the dividend account on that date was not applicable to the payment of death losses but could only be used in accordance with the terms of the contract in dividends in reduction of the next assessment. That is provided in the trustee's contract, a copy of which is printed and made a part of each certificate.

Q. You had it on hand to reduce the amount of the assessment that much? A. Yes, and as I testified, $19,020.70 of that balance on that date was apportioned as dividends on call 126 due March 1st.

Q. You also had a mortuary fund that you call the women's mortuary fund of $84,155.38 on hand? A. We did, that fund being applicable only to the payment of death losses in the women's division of the safety fund department, as expressly provided in the contracts of the women's division.

Q. You mean by that, that is your construction? A. I mean by that, that is the contract.

Q. But you will have to excuse me. I didn't ask you anything about the contract. I asked you as to the amount you had on hand. You did have that sum of money? A. Yes, sir; that is right.

Q. Where was that money? A. On deposit in banks. It was the balance of the men's mortuary fund.

Q. That was to the account of the Hartford Life Insurance Company? A. Yes, safety fund deposit.

Q. Now, what is this item that you call stipulated premium of $39,685.89? A. Well, that item is the balance in the stipulated premium account; that is, balances that accumulated on stipulated premium policies. In that balance are the legal reserve on some legal reserve policies of the stipulated premium department, to which reference has heretofore been made in this deposition, and the surplus on the form 3½ policies, of the deposits made by the form 3½ policy-holders, to which reference has heretofore been made in this testimony, and dividend surplus on the form 4 policies, and surplus on some other stipulated premium policies where they made their payments and paid their own mortality.

Q. Did those seven-year contracts or certificates enter into this? A. Yes, part of that balance is a balance on account of the form 4 policies.

Q. In whose hands was that money? A. In banks in Hartford.

Q. To whose account? A. Account of the Hartford Life Insurance Company.

Q. How long had you had that money? A. That balance had been created by the payment of premiums on these stipulated premium policies, and there was a balance left after all disbursements had been made, and those payments had been made for a period extending from 1894 to December 31st, 1909.

Q. About what per cent of this money was derived from these seven-year certificates? A. About 70 per cent, that is roughly speaking; I couldn't tell you exactly without consulting the records.

Q. Did any of that come from these $2.00 deposits

which were made each year? A. Not one cent of it.

Q. Did any of it come from interest on that money? A. Yes, the interest on that money was credited to that account and remained in the stipulated premium account. By "that money" I refer to the stipulated premium balance.

Q. When you wanted to make out and send out notices of assessments you never took into consideration the fact that you had sufficient money on hand to pay the claims, did you? A. Why, no; there never being enough money on hand to pay all the claims and keep the safety fund department intact.

By Mr. Morrow: As the gentlemen insist on the objection, I will not read the next question and answer.

Q. In other words, you assess and send out notices to collect money to replenish your funds and not to pay death claims? A. That is right. The contract provides that we shall levy assessments to create a mortuary fund for the payment of death losses and that death losses shall be paid from the mortuary fund and not otherwise.

Q. In this particular instance, assessment 126, as a matter of fact, you did send out notices for money not as an assessment to pay death claims but to replenish your fund and also to pay death claims? A. No, we levied an assessment for certain death claims, the proceeds of that assessment to go into the mortuary fund for the payment of death claims.

Q. Almost all of those death claims had been paid before the assessment? A. In the case of call 126 as shown by the record.

Q. I understood you yesterday to testify that the original of Exhibit L was mailed in the post office at Hartford, Connecticut, addressed to Frank Barber at

4201 Pleasant street, St. Louis, Missouri, on January 29th, 1910. Did you mail that notice? A. I did not.

Q. Did you ever see that notice before it was mailed? A. I couldn't say that I did or didn't.

Q. In whose handwriting were the blanks filled out? A. In the handwriting of the person who made out the notices.

Q. In whose handwriting were the blanks filled out in that notice? A. I couldn't state that personally.

Q. Yesterday you took this Exhibit L in your hand while you were testifying and you stated that the original was filled out as in the copy you had before you. How do you know that the original was filled out as you testified yesterday? A. I know that from the records of the company. That information that appears on that exhibit to which you refer is entered on the certificate registers of the company, and the information on the original notice was copied from the original certificate register, as was that exhibit, and that work is done under my supervision by competent clerks. I watch it constantly and keep track of how it was being done and how accurately it is being done, and knowing how accurately the work is done, I can testify that I know that is a copy of the original notice that was sent.

Q. But you don't know of your own knowledge that it is a copy of the original notice sent? A. Not from having compared it with the original notice.

Q. You don't know from anything now that you have in your recollection or ever saw or knew, do you? A. Only from the records of the company.

Q. Why don't you answer yes or no? You don't know of your own personal knowledge, do you? A. No, only as I have stated.

Q. You don't mean to say that you believe that what you have seen on some books somewhere is your own personal knowledge, do you? A. I know that those figures that are on that exhibit that you hold in your hand are the figures that are on our certificate register, and I know that the notice was copied from those figures, and I know it was done by competent clerks, and that work is all carefully checked by other clerks so that no errors will be made, and I know practically none are made.

Q. That is the reason that you say that this is a copy of something that you never saw? A. That is right.

Q. Now, who filled out these blanks here in Exhibit L? A. I think that was filled out by a clerk in the employ of the company named Parker.

Q. You didn't see him do it? A. No, I didn't see him do it, but I have compared that with the register myself so that I know it is a copy.

Q. Why didn't you yesterday when Mr. Jones asked you this question if you knew who sent out this notice, state that you were talking from something that you had seen on the record? A. I saw no necessity for so stating. I stated what I knew yesterday and I still feel that I know it the same today.

Q. How do you know other than what somebody has told you that there ever was an original notice? A. I know that by the record which has this information stamped thereon, "Notice sent January 29, 1910," which was put on because notice was sent and by the person who sent it.

Q. That was the record offered in evidence here yesterday? A. A copy of that record was offered in evidence here, yes.

Q. You didn't make that record? A. No, I didn't.

Q. You never saw that record made? A. That particular record, no, I didn't.

Q. When was the first time that you ever saw the particular record that was offered here yesterday with reference to this claim? A. Undoubtedly at the time that we were first notified that there was likely to be litigation in this case.

Q. About what time was that? A. Some time in the year 1910.

Q. Now, the same is true of Exhibit M with reference to policy 174416, as to your testimony as to Exhibit L, is it not? A. As to the making and sending of the notice, yes.

Q. You don't personally know anything about it? A. Yes, I do personally know about it.

Q. What do you personally know about it, not from the records, not from what somebody told you, but personally know about it? A. Well, I personally know about it because I have supervision of the department in which those notices are made up. I know that the notices on call 126 went out and were received by a large percentage of the membership because they paid that call, practically all of them, there being a lapse of only 2.76 per cent on that call. I know, also, in March, 1910, Frank Barber wrote a letter to the company about his certificate, and I think undoubtedly that letter was called forth by the receipt of the notice of call due March 1st.

Q. You honestly think that you had answered my question as to personal knowledge? A. I do, yes.

Q. How do you know that that notice was mailed on the 29th of January? A. I know all the other notices were mailed on that date.

Q. Did you see them mailed? A. No, I did not. I

know, also, that the register says it was mailed on that date.

Q. How many other notices did you see sent out on the 29th day of January, 1910, with reference to assessment 126? A. I didn't see any of them mailed personally.

Q. Did you see any of them written? A. Yes, I saw a great many written.

Q. Whose did you see written? A. I didn't see any particular one, but being around the office and having supervision of the work which was going on I knew the notices were being written.

Q. Whom did you see writing them? A. Mr. Benton.

Q. Where is he? A. He is cashier. I testified this morning that he is on his vacation. He has this work in personal charge.

Q. How many members were there in the men's safety fund department at that time? A. About 10,000.

Q. Did you see an envelope on January 29th, or any other time, addressed to Frank Barber at 4201 Pleasant street, St. Louis, Missouri? A. I did not, to my recollection.

Q. Why did you testify yesterday when Mr. Jones handed you an envelope and asked you if an envelope similar to that was mailed to Frank Barber on January 29, 1910, why did you say "Yes"? A. No such question was asked me yesterday, to my recollection.

Q. Didn't you testify in substance that the original of Exhibits L and M were put in envelopes on January 29, 1910, and mailed in the post office, addressed to Frank Barber at 4201 Pleasant street, St. Louis, Missouri? A. I did.

Q. Now, if you never made out this notice, never saw the notice, never saw the envelope, why did you say it was done? A. Because, as I have before testified, I knew it was done from our records, which show that a notice was sent on January 29, 1909, and being familiar with the records and with the method of making and mailing of these notices, I am sure that it was sent and that that record is correct.

Q. I understood you to testify yesterday that there was a copy of Exhibit N inclosed in the envelope with Exhibits L and M and mailed to Frank Barber of St. Louis, to the address just given? A. I did.

Q. Did you see a copy of Exhibit N put in an envelope and addressed and mailed to Frank Barber at St. Louis on January 29 or any other date? A. Not to my recollection.

Q. You have no personal recollection now of having done that yourself? A. No, I haven't.

Q. Or of seeing any one else do it? A. No, I have not.

Q. The reason you testified yesterday that that was done was because you say you have examined the record in this office and that shows that was done, is it? A. Yes, because the record shows that that was done and because I know the record would not show that it was done unless it had been, knowing the system of the office.

Q. And when you answered these questions yesterday in the affirmative about this notice being mailed and sent, etc., you did it because you had seen a record in the office that you say purported to show that? A. That is correct.

Q. On January 29, 1910, had you been required to pay any taxes to the State of Missouri on premiums

in this safety fund department by people who made payments in Missouri? A. We were required to pay them each year. We had paid taxes in 1909 on receipts of 1908, and in 1910 we would make payments on the payments to us of 1909, and in 1911 we would make payments of taxes to the State of Missouri on the payments made us from the State of Missouri during the year 1910.

Q. Do you know whether it is a fact that on January 29, 1910, that you were required to pay or had paid taxes to the State of Missouri assessed on premiums from persons who held certificates in the men's division of the safety fund department? A. Yes, we had paid them in the previous year.

Q. I am talking about this time. A. We hadn't at that time paid any in the year 1910.

Q. Did you pay any at all in the year 1910 on premiums? A. Yes, sir, we did.

Q. How much? A. If you will allow me to consult the records of the company I will tell you exactly.

Q. I will allow you to do anything that you want to.

It is stipulated between the counsel that Exhibits D and C, being respectively the original applications on policy 128293 and policy 174416, may be withdrawn and copies thereof substituted; that the original exhibits shall be marked by Miss Nellie W. Annis for identification and shall be delivered to counsel for the defendant to be by him produced at the trial of this cause, the purpose being to use the exhibits for identification at St. Louis prior to trial.

A. On the 15th day of April, 1910, we paid to the State Treasurer of Missouri by check $2,398.93, being a tax on safety fund assessments. This covered the

tax of both the men's and women's divisions, $2,250.65 being the tax for the men's division and $148.37 the amount of the tax paid for the women's division.

Q. How many dollars did you collect in Missouri on which this tax was assessed? A. About $112,500.00. That was assessments collected from the men's division in the year 1909.

Q. Was there a tax bill issued to you before you paid this? A. Undoubtedly there was.

Q. That probably would show better than these receipts? A. That is a receipt.

Q. I say, these tax bills that you have would be the best evidence of what tax was paid and the rate and all about it, wouldn't it? A. I don't think so; no, sir. This check states that it is payable to the State Treasurer of Missouri, the amount $2,398.93. It is for a 2 per cent tax on the safety fund collections in 1909, and on the reverse side the indorsement reads "Received payment in full as specified on the reverse side. Paid Mississippi Valley Trust Company, St. Louis, Missouri, or order, James Cowgill, State Treasurer." If you would like to see the bill I can undoubtedly produce it, but I cannot produce it tonight because most of our people have gone home; it is after office hours, and I cannot find it, but I will be glad to show it to you tomorrow morning.

Q. I understood you to testify yesterday that these quarterly dues of $1.50 on one notice and 75 cents on the other notice were dues levied in accordance with the terms of the policy? A. I did say so; it is a fact.

Q. If, as a matter of fact, the policies are of different dates, and the policy states that the quarter for which dues are assessed to commence one month after the issuance of the policy, how did it happen that

these assessments came together? A. I don't think the contract so states.

Q. Well, have you any other reason to tell me why those dues came at the same time? A. For convenience of the member they were made to come due on the assessment dates provided in this contract. Otherwise he would have to pay eight payments on each certificate a year, instead of four.

Q. I understood you to say a little while ago you didn't think there was a contract on this subject as to when they were to be paid. A. I said that I didn't think that the contract provided that a quarterly date was to commence on the month succeeding the date of the issue of the certificate, which was your question.

Q. Was it a matter of convenience that it was put this way or was it in accordance with the policy or certificate and contract? A. It was put that way as a matter of convenience, but I think it is also contemplated in the contract that it could be placed that way.

Q. I understood you to testify yesterday that the originals of Exhibits S-1 and S-2 and T-1 and T-2, purporting to be a second notice of the assessment call 126 on each policy a registered letter notice was mailed to Frank Barber in St. Louis, Missouri, in the post office, at Hartford, Connecticut, on certain dates referred to in your testimony? A. Yes, sir.

Q. Did you see either the original of Exhibit S-1 or S-2, or T-1 or T-2, placed in an envelope or mailed at the post office in Hartford, Connecticut, addressed to Frank Barber at St. Louis, Missouri? A. I did not.

Q. Did you ever see what you call the original of either exhibits S-1, S-2, or T-1 and T-2? A. Not to my recollection.

Q. Who filled in the writing in the blanks on those exhibits, if you know? A. A clerk in the office by name of Parker.

Q. If you never saw the original of either one of those exhibits and never saw them placed in an envelope and addressed to Frank Barber at St. Louis, or placed in the post office, why did you state yesterday that you knew they were so mailed? A. Well, in the first place, because our certificate registers, which are our original record, show that the notices were made up and mailed on those dates, and in the second place because we have a receipt from the post office at Hartford, Connecticut, for those letters on the dates that they were mailed and registered, and in the third place because we have the receipt of Frank Barber himself for those notices.

Q. You don't know of your own personal knowledge whether Frank Barber ever signed any receipt that you have in your possession, do you? A. Not of my personal knowledge, except from comparing his signature on the receipt with his signature on the application.

Q. Mr. Lawrence, why don't you answer yes or no, whether you know of personal knowledge as to whether Frank Barber ever signed any receipt that you have for letters? A. By personal knowledge did I see him sign those receipts when he received those letters out in St. Louis, Missouri, I didn't, but if you mean do I have knowledge that he did receive them I say that I have a personal knowledge by reason of the fact that we have his receipts here bearing his signature and they are the same as compared with that on the application.

Q. You never saw him sign them? A. No, I never did.

Q. You never saw him sign anything in your life? A. No, I never did.

Q. You don't know his handwriting? A. Only as appears on our applications which are the original basis of our contract with him.

Q. When I asked you the question if you knew of your own personal knowledge as to these signatures, did you understand me to mean anything but what you personally knew yourself? A. Yes, you didn't ask the question in the first place, did I personally see him sign them.

Q. So you think I meant something that you didn't personally know yourself? A. I cannot pretend to know what is in your mind when you ask a question. I only know what the words mean to me when you ask the question and I answer as I think the question requires.

Q. When I ask you a question if you know that a man signed a paper, personally know that a man signed a paper, why do you commence to talk about your record and things of that kind? A. Because it is from the records that I can answer the question to the best of my knowledge as to whether he signed the paper or not.

By Mr. Morrow: As the gentlemen insist upon the objection we do not insist upon the next question and answer and will not read it.

The Court here takes a recess until 9 o'clock tomorrow morning.

Friday, January 3rd, 1913. Continuation of deposition of Lawrence.

Q. Now, if you have any other personal knowledge outside of what you have stated in this cross-examination about these alleged notices or the envelopes or the

mailing of them, I wish you would please state it. A. Well, I think I have stated all I have. I have stated all that I can recollect now.

Q. Then when you said yesterday that you knew these notices were made out and put in an envelope and mailed were you testifying as a part of your personal knowledge as to the fact? A. Not from being present and knowing about it at the time, no.

Q. I understood you to say yesterday that the Hartford Life Insurance Company wrote what is known as legal reserve business until 1880? A. That is right.

Q. Well, that is commonly called old line insurance? A. Yes.

Q. And from 1880 to 1899 you wrote this safety fund business? A. That is right, exclusively.

Q. That is assessment insurance? A. Yes.

Q. Do you know about how much insurance has been issued by the defendant and was in force on December 31st, 1879? A. I don't recollect that amount now; I can get it for you very easily.

Q. Well, about how much did you write from 1880 to 1899, assessment business? A. Well, there was probably $220,000,000 issued. Along in 1910 I think there was as much as $90,000,000 in force at one time.

Q. When the defendant company in 1880 began writing safety fund business the legal reserve business which had been written by it prior to that time was continued in force by the company? A. It was; those contracts were carried out in accordance with the terms.

Q. The operations of the company in the two departments being continued along side by side, as separate departments, did the same clerical force which handled the business of the safety fund handle the busi-

ness of the legal reserve policy-holders? A. To some extent.

Q. Do you know how much legal reserve insurance issued by the defendant company was in force December 31st, 1909? A. I don't recall the amount now; I can furnish it for you.

Q. Do you know about how much? A. No, I don't without consulting the records.

Q. Will you please prepare a tabulation showing as of December 31st, 1909, of each year, the amount of legal reserve business in force by the defendant company in each year, commencing with the year 1889 to 1909? A. December 31, 1899, $5,156,405; December 31, 1900, $14,219,553; December 31, 1901, $16,114,930; December 31, 1902, $19,408,249; December 31, 1903, $24,551,474; December 31, 1904, $23,849,353; December 31, 1905, $18,931,951; December 31, 1906, $18,778,635; December 31, 1907, $19,998,640; December 31, 1908, $19,412,710; December 31, 1909, $21,015,998.

Not being able to complete the taking of said deposition by reason of the lateness of the hour I adjourn the further taking of the same until Thursday, September 19th, at 9:30 a. m.

Nellie W. Annis,
Notary Public.

Pursuant to adjournment as above stated on the 19th day of September, 1912, at the hour of 9:30 a. m., I continued the taking of said deposition as follows:

THOMAS F. LAWRENCE,

in continuation of his deposition, commenced on the 17th day of September, A. D. 1912, on his oath further says:

Q. You have offered Exhibit P, purporting to be a record of the company. In whose handwriting was that record kept and made? A. I cannot tell without looking at the record. It was kept in the handwriting and the records made in the handwriting of one of two clerks in the employ of the company; one was Mr. Parker and one was Mr. Mix; it might have been both.

Q. What do you call that record? A. Certificate register.

Q. I see the words on there "Canceled 3/31/10"; do you know who put that on that record? A. Undoubtedly Mr. Mix did.

Q. I am asking you if you know who put it on? A. I can't tell without consulting the original record. I can do that and then answer from my knowledge.

Q. Did you see anybody make that entry on there? A. No, I did not.

Q. The only way you could state by looking at the original record would be the handwriting? A. Yes.

Q. And the same is true of Exhibit Q of what I have asked you about Exhibit P? A. Yes.

Q. I understood you to say yesterday in reference to Exhibit R that the same was signed by Frank Barber? A. Yes.

Q. You never saw him sign it? A. No.

Q. You don't know his handwriting? A. Only from his original application on which his handwriting appears.

Q. You don't know whether he signed that? A. Undoubtedly he must have. That application was an application for a contract, and he accepted the contract and made the payments on it, and it is a very natural conclusion that he must have signed the application.

Q. Is that the only reason you say he did it? A. I didn't see him personally sign it.

Q. Is that the only reason you say he did it? A. It is.

Q. I understood you to say yesterday that Exhibit W was a letter written by the secretary of your company to Frank Barber; is that true? A. I don't think I stated that the letter was written by the secretary of the company. That is a form of letter which is used in such cases when it appears that a member has changed his address, and it appeared in this case that form of notice was sent out to him with the card asking that he make proper request over his signature for a change of address for our record.

Q. You didn't personally do this yourself? A. Oh, no; this is a copy of a letter-book copy.

Q. Found in your letter-book? A. Yes.

Q. Exhibit X purports to be a copy of a letter which I understood you to testify that your company received from Frank Barber. You never saw him write or sign this letter, did you? A. No, not personally.

Q. All you know about it is you find it in your files here? A. Yes, signed by him, and I naturally supposed it was from him.

Q. Exhibit Y, I understood you to state, was a copy of letter that your secretary wrote to Frank Barber December 16, 1909. You don't personally know whether your secretary wrote such a letter as that, do you? A. I can find out very easily. I was secretary at the time.

Q. I want to know whether you know now. A. I can tell very easily by consulting the record. If my personal signature is there I shall know that I wrote it; at any rate that is a copy of a letter appearing on the letter-book, sent to Frank Barber.

Q. Have you any personal recollection of writing this letter? A. No, when I write one hundred or one hundred and fifty letters a day I cannot remember letters written three years ago.

Q. Exhibit Z. You testified about that yesterday and as I understood you this is not an exact copy of any book or record that you have, but this is a compilation made up by you and taken from your records? A. That is right.

Q. And the same is true of Exhibit AA? A. It is.

Q. And the same may be said of Exhibit BB? A. It may be.

Q. Will you also state that the same is true of Exhibit CC? A. It is.

Q. Will you also state that the same is true of DD? A. It is.

Q. Exhibit GG purports to be a copy of letter from Frank Barber to your company. You never saw him sign the original of this letter, did you? A. I did not.

Q. Exhibit HH purports to be a letter from the secretary of your company March 12, 1910, to Frank Barber. Did you write that letter? A. I cannot say now that I did.

Q. You have no personal recollection about it? A. I did if I was here at that time.

Q. This letter is taken from your copy book, a copy of a letter that appears in your copy book? A. Those signatures are going to be supplied.

Q. You don't remember now who signed it? A. No, I do not.

Q. Now Exhibit II is also a compilation made by you from your records as to dividends in reduction of calls on one of the certificates of Frank Barber. Now that

is not a copy of your record book but a compilation made by you? A. It is not a complete copy of the record, but the figures there are taken from the record.

Q. It is a compilation made by you from your record? A. Yes, sir.

Q. Well, JJ is also a compilation made by you from your records with reference to the dividends in reduction of call on another certificate of Frank Barber, is it not? A. It is.

Q. Exhibit KK, I understood you to say, was a copy of a law or Act of the Legislature of the State of Connecticut. A. That is right.

Q. How do you know? A. Well, I know from my own knowledge that the act was passed, and I knew that the provisions contained therein are the provisions of that act, and I know that it bears the certification of the Secretary of State and that it is a copy of that act.

Q. You never saw the bill itself as passed and signed by the Speaker of the House and the presiding officer of the Senate and approved by the Governor? A. No, I never have.

Q. Never compared it with it? A. Not with that original.

Q. Or with any other law book, did you? A. No.

By Mr. Morrow: Inasmuch as the original question was withdrawn on yesterday, the plaintiff will not read the cross-examination, commencing the fourth question from the top of page 129 of the deposition and ending with the answer to the second question of page 130.

Q. I now hand you Exhibits EE, FF and MM and ask you to state if those are not compilations? A. They are.

Q. Did you personally make all the compilations that you have testified about which have been offered as exhibits in this case? A. Some of them I made personally and some of them I had made. Those that I had made I compared the figures with the books so that I know they are correct.

Q. When was assessment 126 levied and by whom? A. It was levied as of date of January 29, 1910. It was actually computed prior to that date of January 29, 1910, and levied by the officers of the company.

Q. By what officers? A. By the president and secretary and probably one of the vice-presidents.

Q. Who was president? A. Mr. George E. Keeney.

Q. Who was secretary? A. T. F. Lawrence.

Q. Is that yourself? A. Yes.

Q. Who was vice-president? A. At that time there were two, Mr. Raymond G. Keeney and Mr. Lewis G. Gordon.

Q. Were they both present at the levying of this assessment? A. No, I think Raymond G. Keeney was. I am not sure, I said probably one of the vice-presidents.

Q. Did you keep a record of that meeting of your officers? A. No.

Q. What day was that held? A. I couldn't state today on what date, it was held probably the 5th or 6th of January. It was held as soon as the information necessary for the officers to have to levy this assessment was at their disposal.

Q. Where was it held? A. At the president's office of the Hartford Life Insurance Company.

Q. In this room? A. Yes.

Q. Remember at what time of the day it was held? A. No.

Q. Do you now have any personal recollection of the meeting with the president and vice-president and levying this assessment 126? A. No, I have not.

Q. Then of course you don't know what was done and said at that time now of your personal knowledge? A. No, I do not, except that I know what was done at the levying of all assessments. We had the figures and took them to the president and we went over them and the assessment was determined on. I know that that was done in that particular case.

Q. The only way you know that was done in this particular case is the custom you have just stated? A. Yes, it was always followed in every case, sometimes only the president and myself and sometimes one or both of the vice-presidents, usually only the president and myself; we had the matter particularly in charge.

Q. I understood you to say yesterday that the Safety Fund reached its par value of $1,000,000 on December 31st, 1909; is that true? Did you so state? A. No, I don't think I did so state.

Q. Didn't Mr. Jones inquire of you about the par value of the $1,000,000 Safety Fund yesterday, or the day before, and didn't you state its par value in this deposition? A. I don't think so; it isn't my recollection that I had in this deposition.

Q. What was the Safety Fund of $1,000,000 in the Men's Department invested in on December 31st, 1909, January 29, 1910? A. It was invested in various securities which were legal for life insurance companies under the Connecticut statutes—railroad bonds, municipal bonds, and some mortgages.

Q. How do you know? A. How do I know? From

making up the annual statement of December 31st, 1909, which I made up personally.

Q. Did you ever see any of those securities? A. No, I have not personally; they are in the custody of the Security Company, the trustee.

Q. Do you know the names of the corporations or municipalities which issued the bonds and stocks and securities you have mentioned? A. I cannot give them offhand from recollection.

Q. Did you testify as to the par value of any stocks or bonds or securities held as an investment of any of those funds? A. No, I didn't testify to the par value of any particular investment in the fund.

Q. Do you remember of testifying with reference to the face value and par value of any paper or securities held in the Men's Division of any of those funds? A. I do not.

Q. Have you any record that you know of anything further having been done by your company with reference to the Frank Barber certificates in question after March 11, 1910? A. I have no recollection of anything that was done after March 11, 1910, except that the record shows that the assessment due March 1st, 1910, was not paid and the policy canceled.

Q. The officers of the company took no specific action that you have any record of? A. No, it was necessarily purely automatic; it wasn't necessary.

Q. Whether or not it was necessary is simply an opinion of yours? A. Yes, my opinion based on the terms of the contract

Q. Did your officers meet and declare any formal forfeiture of these certificates for non-payment of this call? A. No.

Q. Was there any moneys on hand in any funds on

the 29th day of January, 1910, which had accrued from any prior assessment levied other than the mortuary fund that you have testified to, on December 31, 1909? A. There were undoubtedly balances in the dividend fund and tax fund and the advance payment fund and the stipulated premium fund.

Q. Did you take these into consideration when you called this assessment January 29, 1910? A. Funds on hand January 29, 1910? No, we didn't take into account conditions existing on January 29th, but the conditions as existed on December 31st, and had to because it took a month to make the calculations. We did take into account the condition of the various funds of the company on December 31st.

Q. Was there any surplus left from the levying of assessment 125? A. There was a balance in the mortuary fund December 31st of $74,900. The assessment due December 1st did go into the mortuary fund, that part which had been paid, but it hadn't all been paid on December 31st so that the full amount assessed for in the call due December 1, 1909, had not been paid on December 31, 1909.

Q. Do you know whether or not there was any moneys left from assessment 125 after the payment of the death losses covered by that call not paid when the call was issued? A. What call?

Q. One hundred and twenty-five. A. There was no money from call 125 in the company's possession before call 125 was issued.

Q. As a matter of fact a great number of death claims for which your call 125 was issued had been paid by your company before the call was made? A. Undoubtedly some of them had. I couldn't state how many without consulting the record.

Q. And assessment call 125 was for a sufficient amount, in your judgment, when it was made, to pay the total amount of death claims as listed, paid and unpaid, at that time? A. It was for the death losses listed and was of sufficient amount to replenish the mortuary fund as in our judgment it should be.

Q. Was assessment 125 simply based upon an amount in your opinion that it would take to replenish the mortuary fund as it should be at that time? A. For certain death losses, yes, covering certain death losses included in that call. The assessment is for certain death losses and is sufficient in our judgment to meet those death losses.

Q. What did you mean a while ago when you stated to me that assessment 125 was made sufficient to replenish the mortuary fund? A. For death losses that had already been advanced out of that fund, out of the balance therein, when call 125 was levied and collected.

Q. Do you know about what per cent of death claims had been paid before call 125 was issued? A. I don't know without examining the record; I can get it for you in the same way you got it on call 126 yesterday.

Q. Is there any way you can tell from your records, without going into detail and checking up each one of those claims as we did yesterday about the condition of the mortuary fund and what you anticipated it would take to pay death claims that you had not paid that were covered by that call? A. No way except going to the records and checking up the death claims and seeing what dates they were paid.

Q. When you say that the officers of the company levy an assessment, do they have the information before them as to the number of death claims that have

actually been paid that are covered by the call? A. Sometimes, not necessarily so.

Q. Did they on assessment 125? A. I cannot say whether they did or did not.

Q. Don't you know that they didn't? A. No, I don't. The compilation is sometimes made.

Q. When was it ever made? A. I cannot say now when it has been made, any definite date. It is made when the officers think that information is necessary.

Q. I am asking you to tell me one time when you personally know it was made? A. I could not tell you. I have had it made for my own personal information, to base my judgment on, a great many times. I cannot tell you any particular day in the last five or six years I have had it made.

Q. Have you any record that would show what was before any officer who might have levied the assessment 126? A. Yes, the record that has been before us here of the calculation of the call—Exhibit K.

Q. That is a mere compilation that you have made? A. Exhibit K is a part of the original record which has been before us here.

Q. Didn't you tell me that was taken from a part of the records compiled by you? A. No, I didn't so state.

Q. Exhibit K just taken from one book? A. The figures therein are taken from one book.

Q. From one page? A. From four pages of one book.

Q. Did you know on any day in January, 1910, how many death claims had actually been paid, covered by call 126, as published and sent out by you? A. I might have and I might not; I cannot say.

Q. You don't know whether you did or not? A. No, it wasn't necessary that I should know.

Q. Have you testified as to the exact number of dollars realized from call 126, from the men's division of the safety fund department? A. I have not.

Q. Do you know how much money was actually received from that call? A. I do not. I know the percentage of lapse on that call, but I do not know the exact amount of money that was received on that call, and our books do not show it in any way. The only way that that could be determined would be by going over our certificate registers, of which there are about probably thirty, and taking off the exact amount paid by some ten thousand members on that call and totaling it. Our books show only the amount received in the mortuary fund day by day but not on what particular call it was received, but we do know how much of the membership, in amounts of insurance, pays the call and how much terminates by death and by lapse.

Q. Do you know how much money was realized from call 125 in the men's division of the safety fund department? A. I don't. As I have stated in answer to your previous question I know how much of the membership per thousand of insurance paid that call and how much lapsed, what percentage terminated by lapse and death, and what the percentage of termination was, but our books do not show the actual amount of money received by that call and it could only be computed in the manner as I have described in the previous answer.

Q. I notice on Exhibit N death claim of Moses S. Austin, Bridgeport, Connecticut. February 13, 1907; $3,000. Do you know whether there had ever been a

prior assessment to cover this claim? A. I know there had not.

Q. How do you know? A. From having consulted the records.

Q. When? A. The last time yesterday. It showed on the death claim register; was included in call 126.

Q. The date of death of February 13, 1907, and this call was made January 29, 1910. How did that happen? A. Well, that quite often happens in this way, that a certificate has been assigned to some one and the assignee and the member live in different cities; it has been assigned for debt and the member does not take any further interest in it and often the assignee does not know of the death at the time it occurs, until some time thereafter, and when he learns of it he notifies us.

Q. Was that the case in this particular instance, S. Austin? A. To the best of my recollection it was.

Q. When was the claim first made to you in this Austin matter? A. The claim was undoubtedly made to us the latter part of 1909. I can tell you exactly by consulting the records.

Q. Have you any recollection of it now by which you can so state? A. I know it was in the latter part of 1909.

Q. What day in 1909? A. Without consulting the records I cannot state, but I would be very glad to produce the record which I produced yesterday and give you the exact date and month.

Q. As a matter of fact you have papers and death proofs in each one of those cases, have you not? A. We have and would be very glad to produce them.

Q. In your direct examination Mr. Jones asked you to state what was taken into consideration when assess-

ment 126 was levied and you went on to state to him a number of things that were taken into consideration. As a matter of fact you only knew that there was an examination of some records that appear in your office now? A. Well, I only know that from an examination of the record and personal recollection, as I was present at the time that that assessment was calculated and determined upon.

Q. I understood you to say on cross-examination that you now have no personal recollection of the day and the time and who was present when assessment 126 was levied, is that true? A. I did say I had no particular recollection of the circumstances of the day and time, yes, but I know the president and myself were present.

Q. The only way you know that is the custom, isn't it? A. As I answered before, because we did it all the time I was secretary from 1907 and as long as President Keeney was connected with the company.

Q. When you answered Mr. Jones' question as to what was taken into consideration, you did that in view of certain records that you had gone over at his instance in the preparation of this case just a short time before your deposition commenced? A. Why, as to actual figures, yes. I cannot remember every transaction and every figure of the various calculations and transactions of this company there is.

Q. And when you testified on that question you had before you certain typewritten exhibits that had been offered here and it was from them that you have refreshed your memory when your testimony was given here? A. As to actual figures, yes.

Redirect Examination, by Mr. Jones.

Q. Mr. Lawrence, you testified that there were several issues of each of the forms of certificate designated regular assessment certificates, form 3 certificates, form 4 certificates, and form 3½ certificates, being the several forms which you have testified were segregated for the purpose of collecting mortuary call 126, and which segregation into the four classes appears on the calculation of mortuary call 126, a copy of which is made Exhibit K in this case. Now, was each of the several editions of the several forms of certificate regular safety fund, form 3, form 4, and form 3½ which was in force at the time mortuary call 126 was levied, included in the calculation of call 126 as shown by Exhibit K? A. Yes.

Q. Was every member of the men's division of the safety fund department whose certificate was in force at the time mortuary call 126 was levied, assessed on call 126? A. Yes.

Q. You have testified that the applications which have been marked by the notary respectively, Exhibits B and C, for identification and by stipulation, are not attached to this deposition but are to be produced at the trial, are the original applications made by Frank Barber for policies in suit. On cross-examination you have been asked about your knowledge of Frank Barber's signature. I want to ask you whether you have in the file of this company any other applications for insurance signed by Frank Barber for the policies in suit? A. We have not.

Q. If those applications are not in fact signed by Frank Barber, have you any applications for the policies in suit signed by or purporting to be signed by Frank Barber? A. We have not.

Q. You have testified that the seven-year stipulated premium policies contributed to the safety fund of the men's division the sum of $2.00 per annum during the first seven years, or a total of $14.00 during that time. Did the holders of the seven-year stipulated premium policies during the first seven years of their existence contribute to the mortuary fund of the men's division of the safety fund department anything by the way of assessments levied against the members of that department, and were their death losses during those seven years paid from the mortuary fund of the men's division of the safety fund department? A. The holders of the seven-year certificates, designated form 4, did not during the first seven years from the date of issue contribute to the mortuary fund of the men's division of the safety fund department of the company, and the death losses on those certificates were not paid from the mortuary fund.

Q. State whether the payments on those seven-year stipulated premium certificates made by the holders of those certificates were accumulated separately and independently of the mortuary fund of the men's division during the first seven years of the existence of those certificates, and whether the death losses incurred among the holders of those certificates were paid during the first seven years of their existence from the fund so accumulated and maintained of the payments made by the holders of those seven-year certificates during those seven years of their existence? A. The premium paid during the first seven years from the date of issue by the holders of the seven-year certificates, designated form 4, were, after deducting deposits to the safety fund and the various expense items stipulated in the contract a copy of which is an ex-

hibit in this case, were accumulated as a separate and distinct fund from the mortuary fund of the men's division of the safety fund department. The death losses occurring on those seven-year policies designated form 4 during the first seven years from the date of issue were paid from this special fund.

Q. After the expiration of the seven years the holders of those certificates went into and became members of the safety fund department and were assessed thereafter as all other members of that department were assessed and at the rate shown by the new or higher table of rates? A. Yes, they were, after the expiration of the seven years they were continued as members of the safety fund department and were included with the other members for the purpose of assessment and were assessed in exactly the same manner as all other members of the safety fund department, on the table applicable to them.

Q. And that table was what table? A. That table was the new or higher table.

Q. Now, during the first seven years of the existence of those certificates the fund in which the payments made by the holders of those certificates after deducting from such payments their contribution to the safety fund and the other items about which you have testified, and from which the death losses on those certificates during the first seven years was paid, is designated by you the stipulated premium fund, is it not? A. It is designated by us the form 4, which is a particular fund of the stipulated premium fund.

Q. And is included in the items referred to in exhibits in this case, as the stipulated premium fund, and that fund includes not only the legal reserve on those particular policies, but as well the excess of payments

made to that fund over the death losses paid therefrom, and the legal reserve applicable to the policies? A. Yes, on the stipulated premium policies.

Q. Now, was the amount in the stipulated premium fund on December 31, 1909, or January 28, 1910, applicable to the payment of death losses in the men's division of the safety fund department? A. Absolutely not; it belonged to the stipulated premium policies and could only be applied to their benefit in accordance with the terms of their contracts.

Q. You have also stated in answer to Mr. Morrow's question that there was undoubtedly a balance in the advance premium fund. State whether or not that fund consists of amounts advanced by members or certificate holders for the purpose of paying future assessments that shall be levied against their particular certificates? A. It does.

Q. And the amount in that fund was an aggregate of several amounts paid to you in advance by particular members in order that they might have in your hands funds with which to pay assessments that might thereafter be levied against them? A. That is right.

Q. And was the amount in the fund in any way applicable to the payment of death losses in the mortuary fund? A. Absolutely not.

Q. Now state whether or not the amount in the tax fund was made up of payments made by the members for the amount of the tax levied by the particular state in which they resided, for the purpose of paying the taxes assessed by those states against the company on assessments collected in those states, less what had previously been paid by the company to the states for taxes? A. It was so made up.

Q. And was the balance in that fund applied by you

from time to time, and is it being applied by you from time to time, to the payment of taxes levied in the several states on the assessments which you collected from time to time and from year to year? A. It is. It has been so applied and it is being so applied.

Q. Was the balance in the fund applicable to the payment of death losses in the safety fund department? A. Absolutely not; that was only for the payment of taxes.

Q. You produced here yesterday in answer to Mr. Morrow's question checks for the amount of taxes paid by you to the State Treasurer of Missouri in 1910 and 1911. Were those checks originally issued by this company? A. They were.

Q. And are drawn one on the Hartford National Bank and one on the First National Bank; is that correct? A. That is right.

Q. And how did they come back to you? A. They came back in the usual course, the checks had been paid through our banks, the one drawn on the Hartford National Bank being paid by the Hartford National Bank and the other drawn on the First National Bank being paid by the First National Bank.

Q. When they came back to you they were canceled by the banks as shown on their face? A. Yes.

Q. And they constitute the vouchers of your company for those payments and are a part of the records of your company? A. That is right.

The defendant offers papers referred to in evidence, which is hereto attached and marked "Defendant's Exhibits PP and QQ, which are as follows:

EXHIBIT PP.

(H) (L)
Safety Fund Department. $2398 93/100. No. 1119.
HARTFORD NATIONAL BANK.
HARTFORD LIFE INSURANCE COMPANY.
Hartford, Conn., Apr. 15, 1910.
Pay to order of STATE TREASURER, Missouri,
Twenty-three hundred ninety-eight & 93/100
Dollars
For 2% Tax on S. F. Collections in 1909.
(Not over twenty-six Hundred 2600)
Countersigned:
Geo. E. Keeney, President.
Lewis E. Gordon, 2nd Vice-President.
(I) (C)
(This check was indorsed on back showing payment through bank.)

EXHIBIT QQ.

(H) (L)
Safety Fund Department. $2339 09/100. No. 1270.
FIRST NATIONAL BANK.
HARTFORD LIFE INSURANCE COMPANY.
Hartford, Conn., Apr. 15, 1911.
Pay to order of STATE TREASURER, Missouri,
Twenty-three hundred thirty-nine & 09/100
Dollars
For 2% Tax on S. F. Collections of 1910.
(Not over twenty-six Hundred 2600)
Countersigned:
Lewis E. Gordon, Vice-President.
Raymond G. Keeney, Vice-President.
(I) (C)
(Stamped across face: "Canceled.")
(This check was indorsed on back showing payment through bank.)

Q. The tax of 7 cents levied against Frank Barber on call 126 for policy 128293, and the tax of 15 cents levied against Frank Barber on policy 174416 for call 126, was not paid by Frank Barber, was it? A. It was not.

Q. Did the Hartford Life Insurance Company pay to the State of Missouri any tax on the amount of call 126 levied against Frank Barber on either policy 128293 or 174416? A. It did not. We would have paid the tax had the call on 126 on those certificates been paid, but it was not.

Q. And it was not included therefore in your return for taxes, or in the amount paid for taxes for the year 1910, because the assessment 126 was not paid by Frank Barber on either policy? A. That is right.

Q. Did you pay to the State of Missouri on previous calls levied against and paid by Frank Barber the taxes levied against you in Missouri on the amount of your collections in Missouri? A. We did.

Q. And the tax payments made to Missouri were made by check similar to Exhibits PP and QQ and charged against the tax fund? A. They were.

Q. Now, with respect to the dividend fund, you have testified that on December 31st, 1909, you received from the Security Company of Hartford a sum approximating $20,000 as the income and accretions from the safety fund department, men's division. You have also testified that the balance on hand in your account of income and accretions received from the Security Company after the disbursements thereof by way of dividends was as shown by Exhibit FF $19,447.39. Now, will you please state whether in arriving at the balance of $19,447.39 you included the amount received from

the safety fund department on December 31st, 1909? A. We did.

Q. You have also testified concerning the apportionment of dividend distribution applicable and credited on call 126 among the holders of insurance in the members of the men's division of the safety fund department aggregating $27,171,750. Did the apportionment then made take into account and include the amount which you received from the Security Company by way of income and accretions to the safety fund department on December 31, 1909? A. It did.

Q. The amounts received by you by way of income and accretions on the safety fund department, men's division, from the Security Company of Hartford in 1909 are shown by Exhibit FF to be $39,288.95. Was that amount received by you from the Security Company in one payment or in two payments? A. In two payments.

Q. On what dates? A. One payment on the 30th of June, 1909; the other on the 31st of December, 1909.

Q. And the amount of $39,288.95 shown in Exhibit FF as having been received by you in 1909, includes the payment made by the Security Company to you on December 31st, 1909, to which we have heretofore referred? A. It does.

Q. Now, was the amount in the dividend fund at any time applicable to the payment of death losses incurred in the men's division of the safety fund department? A. It was not. It was only applicable to the payment of dividends in accordance with the terms of the contracts.

Q. You have testified concerning the women's department and you have produced here a copy of one of the forms of certificate issued in the women's division,

attached to which is a copy of the contract between the Hartford Life Insurance Company and the Security Company concerning the women's division. Will you please state whether all of the certificates issued in the women's division were issued after the execution of the trustee's contract to which I have just referred, and pursuant to the provisions of that contract? A. They were.

Q. You testified in answer to Mr. Morrow's question that there were several different forms of certificates issued in the women's division. My purpose in introducing Exhibit LL was to show the trustees' contract concerning that department. Have you in the office and are you ready to produce if requested so to do by plaintiff's counsel, a copy of the form of certificate issued in that department? A. We have and would be very glad to produce it.

Q. At the time when you were testifying concerning Exhibit K, which is a tabulation or calculation of mortuary call 126, you had before you and you now have here the original book in which the calculation was made and from which end of which in so far as the record relates to call 126, the paper Exhibit A is a copy; is that not correct? A. Yes.

Q. Now, you have testified that Exhibits Z, AA, BB, CC, DD, II, JJ, EE, FF, MM, are compilations from your records as distinguished from exact copies of the record or of particular pages of the record. At the time when these several exhibits were prepared and at the time when the several exhibits were checked and compared by you, you had before you the several books in which appear the entries from which those compilations were made, did you not, and you now

have them here in the office? A. I did and they are now here in the office.

Q. You can produce all of the several books and records from which those compilations were prepared and with which they were checked? A. The books and records referred to are now in the office and are here produced before the notary.

Q. Are you satisfied that the several compilations referred to are correctly and accurately made from the books and records now in the office and produced before the notary? A. I am.

Q. Please state whether the entries made in those books and records were made from day to day and from time to time as the transactions occurred and are a part of the books and records kept by you from day to day in the regular conduct of your business? A. They were and are.

Q. In answer to Mr. Morrow's question you stated the amount of death claims listed in a list accompanying call 126 which had been paid, and gave the dates on which such claims were paid, and in answering his question you referred to your records and gave the dates as shown by the records on which the claims were paid. Have you at my request compiled from the records a statement of the death claims in the safety fund department, men's division, that were unpaid and outstanding on December 31st, 1909, and does the paper which I now show you correctly set forth the name and amount and the total of such unpaid death claims on that date? A. It does.

The defendant offers paper referred to in evidence which is hereto attached and marked Defendant's Exhibit RR.

To which plaintiff objects, for the reason those

claims are not the claims contained in this call 126; the names are not in this call that he sent out in this call.

Objection overruled by the Court.

Plaintiff excepted at the time.

Which said Exhibit RR is as follows:

EXHIBIT RR.

SAFETY FUND—MEN'S DIVISION.

Unpaid Claims Outstanding, December 31st, 1909.

Amount.	Name of Insured.
$ 5,000.00	John L. Piper.
1,000.00	George Pfeuffer.
5,000.00	Albert W. Fisher.
5,000.00	Otto Buchel.
2,000.00	Chas. A. Stewart.
1,000.00	A. Theo. Cotten.
1,000.00	Julius T. Capers.
3,000.00	Henry D. Bulkley.
5,000.00	Jacob W. Goetz.
1,000.00	Solomon Finch.
1,500.00	Frederick A. Garden.
2,000.00	Silas Rosenthal.
2,500.00	F. A. Pinkley.
1,000.00	Newman T. Blake.
2,000.00	Solomon S. Miller.
1,000.00	Michael Camire.
3,000.00	Joseph F. Mitchell.
1,000.00	Alfred Burgault.
3,000.00	Chester D. Burnham.
1,000.00	H. C. Harmon.
2,000.00	Zacheus L. Cox.
2,000.00	E. L. Davis.
5,000.00	Jared F. Harrison.
1,000.00	David U. Carson.

2,000.00.....John A. Lawing.
1,000.00.....Edwin J. Judd.
1,000.00.....Gustave Kyrkander.
3,000.00.....Samuel D. Spencer.
1,000.00.....Jacob Kissel.
1,000.00.....Edgar L. Barber.
1,000.00.....Wilhelm Huebner.
1,000.00.....William W. Russell.
1,000.00.....Carl Salzman.
1,000.00.....Ambrose Brown.
5,000.00.....Philip B. Segee.
1,000.00.....Solomon Rosenthal.
7,000.00.....James Sharkey.
5,000.00.....Peter Cavagna.
5,000.00.....P. P. Toale.
2,000.00.....Daniel Woerner.
5,000.00.....F. Marcellus Cox.
7,000.00.....Ulysses F. Moss.
1,000.00.....Peter Leasonfeld.
1,000.00.....Alfred H. Griffin.
1,000.00.....Joseph Discher.
1,000.00.....Harland N. Kinne.
5,000.00.....E. Welch.
1,000.00.....Chas. Henry.
5,000.00.....H. D. Cummings.
5,000.00.....Louis Jenkins.
166.67.....John Murphy.

$128,166.67

Q. Have you also prepared a list of the death claims in the safety fund department, men's division, incurred during January and from and including January 1st to January 29th, 1910? A. I have.

Q. It is the paper which I now hand you and which will be marked Exhibit SS? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit SS.

Which is as follows:

EXHIBIT SS.

List of Death Claims January 1, 1910, to and Including January 29, 1910.

Name	Amount
B. J. Flippin	$ 2,000
Chas. C. Mather	3,000
Geo. M. DeForest	1,000
Chas. B. Ritter	1,000
Wm. Clancy, Sr	1,000
Wm. Devine	2,000
Judson R. Allen	2,000
B. J. McTureous	1,000
M. DeW. Stevenson	5,000
Antoine St. Louis	2,000
Chas. W. Odom	1,000
E. Murray	1,000
Olin S. Luffman	5,000
Henry K. Ingraham	2,000
Paul Bredow	1,000
Isidor W. Ashner	5,000
Thos. McGraw	1,000
John H. M. VanB. Whisker	2,000
B. H. Murray	5,000
John H. Stonham	1,000
Gray Armstrong	4,000
Hugh Neill	3,000
Cynthia M. Morgan	1,000
Chas. A. A. Koenig	2,000
Edward B. Baxley	3,000
B. R. Corwin	3,000
Wm. A. Blake	1,000

Thos. R. Curran	1,000
James D. Gunn	2,000
Wm. H. Wilson, Sr.	2,000
Henry Lampe	1,000
Edw. D. Connoe	1,000
John Rowe	1,000
James Burns	2,000
Clark F. Sumner	5,000
Alsinus M. Smith	5,000
Harmon Nichols	3,000
Timothy McNamara	2,000
Chas. M. Watrous	1,000
Thos. S. Reveal	1,000
N. F. Hamilton	3,000
J. E. McLoughlin	2,000
J. Austin Pease	2,000
J. T. Willbanks	2,000
Watson D. Hayden	2,000
Henry M. Preston	10,000
Henry A. Wheeler	2,000
Ann A. Sinclair	1,000
Wm. King	1,000
Peter E. Ewell	1,000
Walter A. Jenkins	1,000
Jeremiah Leary	1,000
John Dunwoody	2,000
Linus T. Wilbur	2,000
	$120,000

Q. Are the tabulations RR and SS prepared from the records of your company? A. They were.

Q. And were those records regularly kept from day to day as the transactions occurred, and do they constitute a part of your method and manner of record-

ing the transactions of the defendant company? A. They were and do.

Q. Now, in answer to Mr. Morrow, you stated that some 15 of the claims listed in Exhibit N, being a list of death claims which accompanied mortuary call 126, were not paid prior to January 28, 1910. Are those 15 death claims included in Exhibits RR and SS? A. They are included in Exhibit RR, but not in Exhibit SS.

Q. The books and records from which the tabulations or compilations Exhibits RR and SS are now produced in this office before the notary, are they not? A. Yes.

Q. In one or more of the exhibits offered in evidence you have listed as a liability and have deducted from the amount in the mortuary fund, men's division, a death claim of $166.67, the particulars concerning which you testified about in answer to Mr. Morrow's question. Will you please state why that particular claim of $166.67 is charged as a liability against that fund when the other death claims, the aggregate of which appears in Exhibits RR and SS, are not charged as a liability against that fund? A. Because that particular death claim had been assessed for and had been collected and the money so collected was in the mortuary fund and was there subject to the order of the beneficiary.

Q. And as a matter of fact the amount of that claim, $166.67, while it was unpaid it was charged as a liability in your statement to the insurance department? A. It was.

Q. And the other death claims in the safety fund department were not charged by you as a liability in your statements to the department? A. Yes, they

were charged as a liability in our statements to the department, but a corresponding amount for those other death claims was put in the assets under the head "Premiums in Course of Collection, Safety Fund Department." That was not done, however, in the matter of the death claim, $166.67, for the reason above indicated.

Q. You have been asked by Mr. Morrow as to the amount on hand in the women's mortuary fund December 31, 1909, and you have stated there was $84,000 and some odd dollars. Will you please state whether the amount in the mortuary fund of the women's department was applicable to the payment of death losses in the men's department? A. It was not; it was applicable only to the payment of death losses in the women's division.

Q. You have stated that the call 126, as well as previous calls, was levied for the purpose of creating and maintaining or replenishing the mortuary fund, but the amount of that call was based upon the aggregate of the deaths listed in Exhibit N, and the aggregate of the deaths so listed was the amount shown on Exhibit K at the bottom, or near the bottom, $322,378.48, was it not? A. It was.

Q. Now, in answer to questions propounded by both myself and Mr. Morrow you stated that the registered return receipts, copies of which have been made Exhibits U and V, were signed by Frank Barber. You have also stated that you did not see him sign those receipts and that you did not see him write them. I want you to state whether or not you have compared his signature with his signature upon what you say are the original applications for these policies and with

the letters written to you by Frank Barber from time to time? A. I have.

Q. And you stated that the receipt was signed by Frank Barber because of the similarity between the signature on the receipts and the signatures upon the applications and the letters received by you which have been given in evidence? A. That is right.

Q. Now, concerning your meeting of your officers at which call 126 was levied, do you recall that such meeting was held? A. I do in this way, that such a meeting was held I know because I was present at the time of the levying of every assessment from December, 1906, until the present time.

Q. But you do not recall the date or the hour or what particular thing transpired at that meeting? A. That is right.

Q. Would it be possible to go through your books and ascertain just what was the aggregate amount paid by the members of the men's division of the safety fund on call 126? A. It would be possible. I have before stated in this testimony that it would be necessary to go through the certificate registers and take off the amount paid on some ten thousand certificates. This would take probably weeks to determine this amount in that way.

Q. Is it necessary in your business to know the aggregate amount paid on any particular call? A. It is not.

Q. The money received on calls goes into what fund? A. The mortuary fund.

Q. It is necessary, is it not, for you to know the aggregate amount of money in that fund from time to time? A. It is.

Q. And your records are so kept to enable you to

determine how much is in that fund at any particular time? A. Yes.

Q. But they are not so kept as to show just how much of that money was paid on any particular day on account of any particular call? A. That is right.

Q. Money is received into that fund on given days in payment of not only call 126 but previous calls as well, is it not? A. Yes.

Q. How long would it take, in your judgment, to compile from your records a statement showing the aggregate amount which the company received on call 126? A. I should say six to eight weeks with a force of clerks working on it.

Q. You have testified that a registered letter notice was sent to Frank Barber with respect to certificate 128293 on March 10, 1910, and a copy of that registered letter notice and the accompanying second notice was marked Exhibit S-1 and S-2, and that a registered letter notice was sent to Frank Barber on policy 174416, a copy of that registered letter notice and the second notice accompanying it are marked Exhibits T-1 and T-2. Was any other registered letter except the registered letter notices, Exhibits S-1 and S-2 and T-1 and T-2, sent by you to Frank Barber on said March 10, 1910? A. No.

Q. So that if the registered letter receipts, which are respectively Exhibits U and V, are not receipts for those registered letter notices, they are necessarily receipts for nothing that emanated from this office? A. That is right.

Q. Who signed the letter dated December 16, 1909, which is Exhibit Y? A. Mr. F. H. Morgan, who is now assistant secretary. At that time he was a clerk

in the employ of this company and he signed my name to that letter.

Q. Who wrote and signed the letter dated March 12th, Exhibit HH? A. I wrote that letter and signed it.

Defendant's counsel again proffers to plaintiff's counsel the right to examine any and all of the records and compare same with the tabulations made in this case, which records are now in this office.

By Mr. Morrow (Q.): I don't know whether I asked you the question or not, but it is a fact that the tax rate in Missouri covering the periods for which you levied taxes on these assessments or dues or premiums on call No. 126 was a flat 2 per cent rate on net premiums? A. That is right.

By Mr. Jones (Q.): Have you in your possession and do you now produce for inspection before the notary proof of death claim on account of the death of Moses S. Austin, referred to by Mr. Morrow? A. I have and I do.

By Mr. Jones (Q.): Please produce that claim. A. I here produce same. By referring to the proof of death I find that the proof was received by us on the 27th of September, 1909, and the papers show and I recollect the case now, that a man who was at that time in the employ of the company told me that this man Austin had died some years previously. The policy was payable to James Gregory, who lived in Bridgeport. Austin lived and died in New Britain. Gregory was apparently unaware of the fact that Austin had died, and on September 14, 1909, I wrote to Gregory personally and told him of the fact after which he made proof of death claim for the proceeds of the certificate.

By Mr. Jones (Q.): And was the claim approved and

listed for payment after that date? A. It was approved and was paid and listed in call 126.

By Mr. Jones (Q.): Was that the next succeeding call after the claim was made? A. It was.

Defendant offers in evidence deposition of Arthur M. Bunce, which is as follows:

ARTHUR M. BUNCE,

having been duly sworn by Miss Nellie W. Annis, in answer to interrogatories by Mr. Jones, testified as follows:

Q. State your full name, residence, age and occupation. A. Arthur M. Bunce; about 40 years; residence Hartford, Connecticut; assistant secretary of the Security Company.

Q. By the Security Company you mean the Security Company of Hartford, Connecticut? A. Yes.

Q. That is the company which has the handling of the Men's Safety Fund Division of the Hartford Life Insurance Company? A. Yes, sir.

Q. And as assistant secretary of that company are you familiar with that fund, the amount on hand in that fund December 31, 1909? A. Yes, sir.

Q. Will you please state the amount on hand in that fund December 31, 1909, giving both the book or cost value and the par value of the securities in which the fund was invested. (Showing witness paper.) Is this a memorandum made by you at my request showing the amount of that fund? A. It is.

Q. It was taken from the records of your company? A. Yes, sir.

Q. Please state the amount. A. December 31, 1909, the Security Company as trustee for the Men's Division of the Safety Fund Department held securities amount-

ing at par value to $989,451.88, and the cost value of those various securities at that time was $1,038,639.19.

Cross-Examination, by Mr. Morrow.

Q. What was this fund invested in, what securities? A. On December 31, 1909?

Q. Yes. A. It was then invested in funds legal for life insurance companies.

Q. What life insurance companies? A. Any life insurance companies of the State of Connecticut.

Q. Tell me what life insurance companies? A. Well, the Aetna.

Q. How much did you have of the Aetna? A. You misunderstood me. It was invested in securities which were legal investments for life insurance companies of the state.

Q. I am trying to inquire what securities they were. A. They were railroad——

Q. What railroad? A. New York, New Haven and Hartford.

Q. How much did you have of that? A. I should have to look those matters up in detail.

Q. Then, you don't know? A. I don't pretend to carry those things in my head.

Q. Was it stock or bonds? A. New Haven stock.

Q. What was New Haven stock worth at that time? A. I can look these matters up; I don't know.

Q. How much New Haven stock did you have at that time? A. My recollection is we had 133 shares.

Q. What did you pay for it? A. I don't know without reference to the records. It can be ascertained and I will ascertain it for you if you like.

Q. What was it worth on December 31, 1909, per share, on the market in Hartford? A. I don't know.

Q. When did you know? A. The last time I looked at the quotations for that date.

Q. When was that? A. I couldn't say.

Q. Well, what was the par value—face value of those 133 shares? A. $100 a share.

Q. What other railroad securities did you have? A. I think in order to testify correctly I should be allowed to bring with me a list of the securities of this fund, which I would be very glad to do.

Q. Then you don't know what other railroad stocks you had? A. I don't intend to testify from memory on a fund of this size.

Q. Can you mention any other railroad other than the New York, New Haven & Hartford Railroad Company? A. I think we had some stock of the St. Joseph, Denver & Southern Railroad.

Q. When did you get that? A. I couldn't say.

Q. About what time? A. I don't know.

Q. What did you pay for it? A. I don't know.

Q. What was the face value per share? A. $100.

Q. Can you state within a thousand dollars how much you held of that at that time? A. No, sir.

Q. You have no idea now from memory? A. No, sir. I don't pretend to charge my mind with such things.

Q. What was that stock worth on the market in Hartford or New York City on December 31, 1909? A. I don't know.

Q. What other stock did you have this fund invested in at that time? A. We held some bank stocks.

Q. What stock? A. Phoenix National Bank of Hartford, and Aetna National Bank of Hartford.

Q. All of Hartford? A. Yes, sir; Hartford National, Farmers and Mechanics, National Exchange, and American National.

Q. About how many dollars did you have invested in the stock of those banks at that time? A. I don't know.

Q. What did you pay for it? A. I don't know.

Q. The face value was $100 per share? A. Not all, American National Bank, $50; National Exchange, $50; and the Hartford National was $50.

Q. Did you have the investment of these funds for your company? A. No, sir.

Q. Did you actually purchase them? A. No, sir.

Q. Did you actually sell any of them yourself? A. No, sir.

Q. Well, the only way you know is what somebody told you? A. No, sir; I know by the records I have kept of this fund for the last fourteen years.

Q. I am talking about the stocks themselves, the only way you know is what somebody told you about them? A. I know by the records of the Security Company.

Q. Not from any record that you made—you didn't buy them, did you? A. No, sir; I had no authority to buy.

Q. And you didn't sell them? A. No, sir.

Q. Any other stocks that you had this fund invested in? A. I have endeavored to name them all from my recollection.

Q. How much money did you have invested in these various stocks on December 31, 1909? A. I think you asked me that and I told you I didn't know.

Q. Do you know now? A. No.

Q. About how much, coming within $100,000 of it, from memory? A. I wouldn't want to testify within $100,000 of anything; I want to get the figures and testify from them.

Q. This memorandum which you have here, and

which Mr. Jones handed you when you read off those figures, in whose handwriting is that? A. Mr. Jones'.

Q. And you didn't make those figures? A. I didn't make those figures, but Mr. Jones copied those from figures which I did make.

Q. Where are those figures which you made? A. I haven't them with me now.

Q. How do you know Mr. Jones made them? A. I saw him.

Q. Did you read it back to see whether it was right or not? A. Yes, sir.

Q. Your company has not lost any money for this safety fund deposit, has it, by investments to your knowledge? A. Hasn't lost any money?

Q. Yes. A. No, sir.

Q. It has made money all the time, hasn't it? A. No, sir.

Q. In the whole the investments have been advantageous, haven't they? A. To the Security Company?

Q. No, to the fund. A. I think they were.

Q. Your trust was well invested and you made money for them? A. Yes, sir.

Q. When did this fund reach the $1,000,000 point? A. In 1894, to the best of my knowledge and belief.

Q. You kept the books yourself? A. No, sir.

Q. When did you commence working on the books yourself? A. In 1898.

Q. How much did it exceed the million dollars from deposits of members in the men's division when you went to work on the books? A. Nothing.

Q. Hasn't there ever been a time when you have had more than one million dollars in your hands in the men's department of the safety fund? A. No, sir.

Q. At no time? A. No, sir.

Q. Just got right up to a million? A. Yes, sir, in 1894.

Q. And immediately stopped when it got to the million? A. That was the contract.

Q. I am talking about the facts. A. Yes, sir.

Q. You never have had a dollar deposited with you over the one million dollars? A. There may have been an instance, so to speak, during transit of moneys which were deposited with the Security Company, when the Security Company held more than one million dollars, but it was held for the purpose of being paid back to the Hartford Life Insurance Company for the members of the safety fund and was never considered by the Security Company as in its hands for investment.

Q. Will you please just answer my question? Was there ever any time that there was more than one million dollars in the Security Company from deposits received from members, in this fund? A. Never more than one million dollars in the hands of the Security Company for investment. As trustee for the safety fund of the men's division, the Security Company never held for investment more than one million dollars.

Q. Is it a fact that after the million-dollar point was reached the Hartford Life Insurance Company never turned over to you these ten dollars on the thousand of deposits that were received from membership? A. That is not a fact.

Q. Did they turn it over to you? A. Yes, sir.

Q. How much did they turn over to you after it reached one million dollars? A. They turn it over now.

Q. About how much? A. I couldn't say.

Q. You don't know how many dollars over and above a million dollars you have had in your hands in these deposits since 1894, do you? A. No, sir.

Q. It might run up into hundreds of thousands of dollars, mightn't it? A. I wouldn't say.

Q. You have a general knowledge? A. No, sir, there are too many items.

Q. Did you have any deposits in 1909 over and above the million in your hands? A. We received deposits in 1909 from the Hartford Life Insurance Company which, had we held them, would have been over one million dollars.

Q. You got them, didn't you? A. Yes, sir.

Q. They were in your hands while the company held one million dollars? A. Not for investment.

Q. You had them there? A. Yes, sir.

Q. About how much did you have that year? A. It was a small amount that year.

Q. About how much? A. I wouldn't testify to how much.

Q. Have you, from time to time made written reports to the Hartford Life Insurance Company of your trusteeship in that matter? A. Yes, sir.

Q. Did you make them? A. Yes, sir, for the last fourteen years.

Q. Do you know where they are? A. In my office.

Q. They are in the form of written reports? A. Yes, sir.

Q. Did you examine them when you were preparing those figures here? A. Yes, sir.

Q. Now, you say at no time you held more than one million dollars in this safety fund on deposits, after it reached the one million-dollar mark? A. I didn't say that. I said there was no time when we held for investment more than one million dollars.

Q. A number of times since that fund reached the million-dollar limit there have been deposits of more

than two hundred thousand dollars, haven't there? A. You refer to par value?

Q. I am talking about money paid in to your Security Company. A. There never was a time when more than one million dollars par was invested in the safety fund.

Q. You had one million dollars deposited with you in the safety fund? A. Yes, sir.

Q. Now, after that the Hartford Life Insurance Company, when it received these ten-dollar payments from members, they handed them over to you under the contract? A. Yes, sir.

Q. And you got them? A. Yes, sir.

Q. About how much was that in addition to the million dollars? A. I don't know.

Q. Have you any idea? A. No, sir.

Q. Can you come within one hundred thousand dollars? A. Not from memory.

Q. Have any in 1909? A. Did we hold any?

Q. Yes. A. Only temporarily.

Q. If you held it temporarily, you held it? A. Not for investment.

Q. You have them in your hands in 1909? A. We had them, but not for investment.

Q. What did you do with that money? A. Paid it back to the Hartford Life Insurance Company.

Q. Did you take its receipt for it? A. Got its check.

Q. The Hartford Life Insurance Company checked that out, did they? A. Yes, sir.

Q. Tell me some stocks you lost money on in 1909 in investments. A. We didn't lose money on any stocks in 1909.

Q. How happened it if you invested this and didn't lose money on it that the par value depreciated over the

face value? A. There were some bonds sold which didn't realize their par value.

Q. What do you mean by bonds sold? A. I mean a transfer of bonds from one party to another.

Q. When was that? A. Some time previous to 1909.

Q. About how long ago? A. Within a few years.

Q. What bonds were they? A. They were bonds of an irrigation company.

Q. Who purchased them? A. The Security Company, the trustee.

Q. When? A. I couldn't say exactly, in the early 80's.

Q. What was the name of that company? A. I should say the Southwest Irrigation Company.

Q. In the 80's do you know what they paid for the bonds of that company? A. Not from memory.

Q. Do you know what they sold them for? A. Not from memory.

Q. You say the Security Company invested in securities like that in 1880? A. They were legal for life insurance companies in Connecticut.

Q. About how much did the Security Company invest in that project? A. I think it was $10,000.

Q. How much did they lose on it? A. I wouldn't attempt to testify to these things from memory.

Q. About? A. In the neighborhood of $7,000. I would be very glad to furnish the figures of that accurately.

Q. Do you remember that the Security Company invested in securities of that class away back in 1880, from your own memory? A. It appears on the records.

Q. I am asking, do you remember it? A. No.

Q. You don't know whether they did or not, do you?

A. To the best of my knowledge and belief they did, but I don't remember that they did.

Q. You don't know anything about this except what somebody told you, do you? A. I know from the books of the Security Company, their records.

Q. And that is what you are testifying from now. You don't know how much was invested in that particular thing? A. I don't attempt to testify from memory to those figures away back there.

Q. What other securities was this fund invested in away back there, other than government bonds? A. Municipal bonds, railroad bonds.

Q. Invested in railroad stocks and bonds and municipal bonds and mortgages? A. Yes, sir.

Q. From 1880 on up? A. Yes, sir.

Q. Well, you paid interest on this fund for how many years? A. Paid interest?

Q. Yes. A. To the certificate holders?

Q. Do you pay interest? A. I don't understand the question.

Q. Did your company pay interest on this deposit of one million dollars and the surplus over a million dollars when you had it and kept it? A. We paid back to the Hartford Life Insurance Company interest earned on the fund.

Q. Then you paid the Hartford Life Insurance Company interest? A. The interest that the fund earned.

Q. How much interest did you pay them, I mean per cent? A. Whatever the bonds yielded, minus the expenses.

Q. Is that the way that fund was carried on? You paid them whatever the bonds yielded? A. The gross income of the fund minus the expenses of handling it;

the net income was turned over to the Hartford Life Insurance Company.

Q. Suppose there was cash deposited with you, what about that? A. After the fund reached one million dollars if cash was deposited with us by the Hartford Life Insurance Company, during any six months, it was turned over to the Hartford Life Insurance Company at the end of the six months.

Q. Did you pay interest on it? A. We paid interest at two per cent on any cash balances that we held.

Q. When did you commence to do that? A. I think we practically always did that.

Q. Ever since 1880? A. Yes.

Q. Your records show that? A. Yes, sir, I should say earlier than that.

Redirect Examination, by Mr. Jones.

Q. You have testified concerning the men's safety fund that on December 31, 1909, the book or cost value thereof was $1,038,639.19, and that the par value of the securities in which that amount of money was invested was $989,451.88. Where did those figures come from? A. They came from the records of the Security Company, as shown by their books.

Q. You don't pretend to carry the amount in your head at any time? A. No, sir.

Q. You also had a women's safety fund, didn't you? A. Yes, sir.

Q. And did you give me on this memorandum from the books the amount invested at that time in that fund? A. I did.

Q. And what was the book value of the women's fund and the par value of the fund?

Mr. Morrow: I object to the witness looking at the

paper. If he has a copy of his books he can submit it.

A. On December 31st, 1909, the women's division of the safety fund had securities of a book value of $127,-715.10, the par value of the securities being $121,470.85.

Q. You are reading now from a memorandum? A. I am.

Q. And that memorandum was prepared from what? A. From the books of the Security Company.

Q. You are now testifying at the office of the Hartford Life Insurance Company in Hartford, Connecticut, which is on what street in Hartford, Connecticut? A. Corner of Ann and Asylum streets.

Q. Is the Security Company located in Hartford? A. It is.

Q. On what street? A. Pearl street.

Q. How far from the office of the Hartford Life Insurance Company? A. A quarter to a half mile.

Q. And the books and records of the Security Company pertaining to the safety fund, both the men's division of the safety fund and the women's division of the safety fund, all of the records concerning these funds, are where? A. At the office of the Security Company.

Q. Now, Mr. Morrow has asked you as to the number and amount and the class of various stocks, bonds or other securities in which the men's safety fund is invested. State whether or not the amount of the several stocks and the cost thereof, and the selling price thereof, wherever they have been sold or exchanged for other securities, appear on the records of the Security Company? A. They do.

Q. And those records are accessible? A. They are.

Q. And you are free to show them to Mr. Morrow? A. I am.

Q. And when you have stated that you could not or would not testify as to the particular amounts or particular characters of stocks or the value thereof on a particular day, did you mean by that to say that you refused to testify or that you simply did not carry those figures in your head? A. I did not mean to refuse to testify. I don't attempt to carry that mass of figures in my head for the purpose of testifying exactly.

Q. And all of those things about which he inquired of you can be ascertained from the books of the Security Company? A. They can.

Q. Now, when you stated, in answer to Mr. Morrow's question that this safety fund at no time exceeded one million of dollars, did you mean as you afterwards stated, that it at no time exceeded one million dollars cost value? A. I mean that it at no time exceeded one million dollars par value.

Q. Now, after the fund reached one million dollars par value, in addition to the income or interest on that fund, did or did not the Hartford Life Insurance Company pay over to you from time to time subsequent ten-dollar payments made by the members for deposit to the safety fund? A. They did.

Q. Were those payments received by the Hartford Life Insurance Company of $10 per thousand to the safety fund and by the Hartford Life Insurance Company turned over to you after the fund reached one million dollars par value, ever invested by you? A. No, sir.

Q. What was done with those contributions when and after the safety fund amounted to $1,000,000 par value? A. We kept two accounts, one of principal and one of income. In the principal account we carried cash for investment to make the balance of the fund up to

$1,000,000 par value; that cash came from the sale of securities. All receipts of cash from the Hartford Life Insurance Company, which are derived from the $10 assessments, are credited to this income account.

Q. After what time? A. After the fund reached $1,000,000 par value. At the end of each six months the Hartford Life Insurance Company drew from us all moneys in that income account, which then included interest from the various securities and whatever they may have handed to us during the six months elapsed.

Q. And was that income, including the payment of ten dollars, after the fund reached a million dollars par value, paid over to the Hartford Life Insurance Company semiannually? A. Yes, sir.

Q. And on what date? A. It was reckoned as of the 30th of June and 31st of December, and subject to their check from that time on.

Q. As to the *corpus* of that fund, was that subject to their check at all? A. No, sir.

Q. Only the income? A. Yes, sir.

Q. And the income increased by the payments of ten dollars per thousand made by members after the *corpus* of the fund reached one million dollars par value? A. Yes, sir.

Q. Now, in the trustees' contract, a copy of which has been introduced in evidence in this case, being contract between the Hartford Life Insurance Company and the Security Company, attached to the policies in suit, it is provided that the ten-dollar payments made by members when received by the Security Company shall be invested by the Security Company in United States bonds. By an act of the Legislature and the General Assembly of the State of Connecticut, approved April 10, 1889, it is enacted that the Security

Company may invest the safety fund in such other securities, in addition to United States bonds, as life insurance companies of this state are by law authorized to invest them, instead of being compelled to invest all of said fund in United States bonds. Now, do you know whether or not the fund was invested exclusively in United States bonds up to 1889?

Mr. Morrow: I object to the question as leading and suggestive.

A. It was invested in United States bonds exclusively up to 1889.

Q. And after 1889 was it or not invested exclusively in United States bonds? A. After 1889 it was not invested exclusively in United States bonds.

Q. In Mr. Morrow's questions to you he first referred to the date 1880 and then after a series of questions asked you whether "back there" the company had invested the safety fund in municipal bonds, railroad bonds and similar classes of securities, and you answered that it had. Is that statement correct? A. It is not correct. I wish to ask Mr. Morrow to allow me to correct that statement.

Q. What is the correct statement? A. That date 1880 should be changed to 1890.

Q. And the fact is what in respect to investments prior to 1890? A. That they were entirely in United States bonds.

Q. But afterwards it was not entirely invested in United States bonds? A. It was not.

Q. Now, these Suthwestern Irrigation bonds, were they purchased after 1890 and after the act of the Legislature or before? A. After the act of the Legislature.

Q. And if you stated in answer to Mr. Morrow's question that they were prior to 1889, was that an

error, and what is the fact? A. It was an error in my statement.

The defendant offers to give the plaintiff's counsel access and the right to inspect any and all of the books of the Security Company appertaining to the safety fund, and its administration, and offers either to go with the plaintiff's counsel to the office of the Security Company and examine those books or cause to be produced here for the examination by plaintiff's counsel, any and all books or records which he may desire to inspect.

Mr. Morrow: On behalf of the plaintiff I wish to thank the gentleman for his courteous offer, but in order that the plaintiff's case can properly be heard in regard to these books we would say that we have had no opportunity to examine except by taking depositions, we are away from home and here at Hartford. We thought we had gone the limit when we agreed that copies might be offered and books not taken away, in order that a proper hearing of this case might be had, and we will have to insist that the rule not be violated now.

Mr. Jones: In answer to which defendant's counsel again tenders to the plaintiff an inspection here and now of any of the books he desires to examine. I have not the books here, but I will have produced for counsel any book that he may want from the Security Company, that he may designate, or I will go to the office of the Security Company with him, which is within one-fourth to one-half of a mile of the place where these depositions are being taken, and let him examine any record pertaining to the record.

I, Nellie W. Annis, a Notary Public within and for the town and county of Hartford, State of Connecticut,

do certify that in pursuance of the attached notice, came before me, at Hartford, in the county of Hartford and State of Connecticut, Thomas F. Lawrence and Arthur M. Bunce, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined and their examinations reduced to writing by me, their signatures to said depositions being waived, and their said depositions are now herewith returned.

And I further certify that said Thomas F. Lawrence and Arthur M. Bunce are residents of the county of Hartford in said State of Connecticut.

Given at Hartford, in the county of Hartford and State of Connecticut, this 30th day of September, A. D. 1912.

NELLIE W. ANNIS,
Notary Public.

Hartford, September 30, 1912.

State of Connecticut, } ss.
County of Hartford. }

It is hereby certified that Nellie W. Annis, on the 17th day of September, A. D. 1912, was and now is a Notary Public within and for the said State of Connecticut, duly commissioned and acting as such, and that full faith and credit are due to her acts as such.

In testimony whereof, I, George A. Conant, Clerk of the Superior Court for Hartford County, have hereunto subscribed my name and affixed my seal of office this 30th day of September, A. D. 1912.

(SEAL)

GEORGE A. CONANT,
Clerk of the Superior Court for Hartford County.

Defendant offers in evidence affidavit of Thomas F.

Lawrence, secretary of Hartford Life Insurance Company, and affidavit of Collins W. Benton. Exhibit 7.

To which the plaintiff objects, for the reason it is shown by the sworn testimony of Thomas F. Lawrence in the deposition read here by the defendant, that he had no knowledge whatever of the facts certified to in this certificate, and that for that reason cannot be permitted to make the certificate. Object further to the certificate of Lawrence as to the facts stated therein as to the address of Frank Barber, for the reason that it cannot be proven in that way, both as to the address at the time of the mailing of the notice and the alleged address as it appears upon the books of the Hartford Life Insurance Company. Object to the affidavit of Collins W. Benton, for the reason that it isn't shown by independent evidence that it was the duty of Collins W. Benton to perform the services of addressing and mailing the notice as provided in the policy. Object to it for the further reason that he doesn't swear in this affidavit that he actually mailed the notice in question. Another objection, for the reason that this affidavit shows that the notice was mailed on the 29th, when the other evidence shown on the records of the company shows it was mailed on the 30th. Objections overruled by the Court. Plaintiff excepted at the time.

Which said Exhibit 7 is as follows:

EXHIBIT 7.

I, Thomas F. Lawrence, Secretary of the Hartford Life Insurance Company, hereby certify that on January 29th, 1910, I was secretary of the Hart-

ford Life Insurance Company; that notice of mortuary call No. 126 on certificate No. 174416, addressed to Frank Barber at No. 4201 Pleasant street, St. Louis, Missouri, was mailed, postage prepaid, at the City of Hartford, in the State of Connecticut, on January 29th, nineteen hundred ten; that the address of Frank Barber as it then and thereafter appeared on the books of the Hartford Life Insurance Company was No. 4201 Pleasant street, St. Louis, Missouri; that the paper hereto attached is a true and correct copy of notice of call No. 126 so sent to said Barber.

(Seal) Thomas F. Lawrence,
Secretary of the Hartford Life Insurance Company.

Hartford, Conn., Sept. 20, 1912.

Special Notice of Quarterly Call No. 126.

Your next quarterly call will fall due and be payable June 1, 1910.

HARTFORD LIFE INSURANCE COMPANY,

Hartford, Conn.
January 29th, 1910.

Frank Barber,
4201 Pleasant St.,
St. Louis, Mo. 15

2—174416

This call which will be due Mar. 1st, 1910, is made to meet 119 deaths (as shown by accompanying list), benefits, $322,378.48 and expenses on your policy, as follows:

For Mortality Call	$13.09
For Quarterly Dues to June next	1.50
Credit	$14.59
Dividend to be applied if payment be made	1.40
Amount Due	$13.19

Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

Unless the payment called for by this notice shall be paid to the company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to

Hartford Life Insurance Company.

Make all remittances by draft, check, P. O. or express money order when possible. Letters containing currency must be registered.

See over for Special Notice.

Edward A. Wright,
Notary Public.

(Attached to certificate of T. F. Lawrence and affidavit of C. W. Benton.)

SPECIAL NOTICE.

If the payment of the above quarterly call is not received at this office on or before *Mar. 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until *Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Mar. 5, 1910, will be obliged to pay this fifty-cent fee in order to have the policy unconditionally reinstated.

After *Mar. 20, 1910, the limit allowed for payment under the registered notice, the company reserves the right to require a medical examination as a condition of reinstatement.

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*If residence is on or west of the meridian of Salt

Lake, Utah, ten days additional time is allowed.

Collins W. Benton, being duly sworn, on oath states that he is and on January twenty-ninth, nineteen hundred ten, was in the employ of the Hartford Life Insurance Company; that it is and then was his duty to perform the service of addressing and mailing notices of mortality calls levied and assessed against Frank Barber; that on said January 29th, 1910, affiant caused to be prepared notice of mortality call No. 126 and addressed said notice to Frank Barber at No. 4201 Pleasant street, St. Louis, Missouri; that a copy of said notice so prepared is hereto attached; that said notice so prepared and addressed was inclosed in an envelope addressed to Frank Barber at 4201 Pleasant street, St. Louis, Missouri; that there was affixed to said envelope so addressed a two-cent postage stamp and said envelope so stamped with said notice therein was deposited in the post office at Hartford on January twenty-ninth, nineteen hundred ten.

Collins W. Benton.

State of Connecticut, } ss.
County of Hartford. }

On this 30th day of September, 1912, personally appeared before me Collins W. Benton, who being by me first duly sworn, states that the matters and things above set forth are true.

(Seal) Edward A. Wright,
Notary Public in and for Hartford County, State of Connecticut.

State of Connecticut, } ss.
County of Hartford. }

Edward A. Wright.

I, George A. Conant, Clerk of the County of Hartford, and of the Superior Court of said State

within and for said county and keeper of the seal thereof, do hereby certify that Edward A. Wright, Esquire, on the 23rd day of January, 1912, was, ever since has been, and now is, a notary public within and for said State, duly appointed, commissioned and sworn, with authority by the laws of this State to administer oaths, to take affidavits, depositions and the acknowledgment of deeds and other instruments; that his term of office commenced on the 23rd day of January, 1912, and will expire on the 31st day of January, 1914, and that his signature above written is genuine.

In Testimony Whereof, I have hereunto set my hand and the seal of said Superior Court, at Hartford, in said county and State, on this 1st day of October, A. D. 1912.

(Seal) George A. Conant,
Clerk.

Defendant offers in evidence the judgment roll in the case of Charles H. Dresser *et al.* against the Hartford Insurance Company *et al.*, showing the whole judgment role, that terminated in the judgment of the Supreme Court of Errors of the State of Connecticut, Third Judicial District, reported 1901, and certified in accordance with the Acts of Congress. Exhibit 8.

By Mr. Morrow: We object to that record, for the reason it is not the whole record of the Superior Court of New Haven County, Connecticut, isn't certified to be so; but that it is only certified to be the record on appeal from this court to the Supreme Court of Errors of the State of Connecticut at its October Term, 1907. We object to it, for the reason it isn't shown by this record what the declaration of complainant actually was and it is not set out in this record, and that the record shows upon its face that it is not a complete

and whole record of the court. And for the further reason it isn't shown that the lower court had jurisdiction of the parties and subject-matter. For the further reason that neither the plaintiff nor Frank Barber, deceased, were parties to this action and are not bound thereby; and for the further reason that the record in question is wholly incompetent on that ground that no matter considered in this record is a proper issue in this case, and that the plaintiff in no event can be bound thereby. I want to make the further objection that this appears to be a record of the papers and files and proceedings in the Supreme Court of Errors of the State of Connecticut, Third Judicial District, and that there is no question in this case involving the law of the State of Connecticut; but that the policy of insurance was written upon the life, as shown by the record, of a man in Missouri by a company doing business in Missouri, and the construction of the contract herein is purely a legal question under the laws of Missouri. Object to the record further, for the reason it is not properly certified as required by either the laws of Missouri or the Act of Congress, in this, it does not contain the necessary recitals under the statute or under the law and isn't certified to be a record of either the Supreme Court of Errors of the State of Connecticut or of New Haven County Superior Court. And object further, that the issues in that record are not the same as the issues here.

By the Court: Ruling on the objection to the piece of evidence just offered reserved.

Plaintiff excepted at the time.

The material part of which are the decrees, which

are Exhibits B and C to defendant's amended answer (Rec., pp. 21 to 49).

Defendant offers in evidence the decision of the Supreme Court in the same case as shown in Volume 80 at pages 681 to 715 of the official publication of Volume 80 of the Supreme Court of the State of Connecticut. Exhibit 9.

By Mr. Morrow: The plaintiff objects to the book and record offered, for the reason that Frank Barber, deceased, nor the plaintiff herein were parties to that suit and are not bound thereby, and for the further reason that it does not tend to prove or disprove any issue in this case, and is incompetent for that reason; and, second, we object to the book and the record offered in evidence because a printed book of cases adjudged in the courts of a sister state can only be admitted as showing the unwritten or common law of such states, and that the unwritten or common law of the State of Connecticut is incompetent and is inadmissible in this case, for the reason that the question to be determined upon the contract here, which is a Missouri contract, are legal questions to be determined by the ruling decisions of the courts of Missouri and under the law of Missouri, and for that reason the decision in question is incompetent evidence.

By the Court: The decision upon the last objection just made to be reserved until final argument on the case.

Plaintiff excepted at the time.

By Mr. Suddath: In regard to the question asked of Mr. Lawrence whether or not the construction and disposition of the trust fund had been the subject of liti-

gation in the Dresser case, I think that is competent here.

By the Court: We will reserve that, too.

Defendant excepted at the time.

By Mr. Suddath: We are offering this record, Exhibit No. 8, judgment roll, first, for the purpose of showing that the judgment in this case was *res adjudicata* as to the trust fund, the million-dollar trust fund, because the plaintiff asked for an appropriation of his twenty dollars out of that to pay his dues. We offer it as *res adjudicata* as to the mortuary fund, and we offer it to show that it would be in violation of the rule of comity between the states.

By Mr. Morrow: I renew my objection, of course, to the admission of Exhibits 8 and 9 and as to the question and answer asked T. F. Lawrence as to the fund being a source of litigation in the Dresser case.

Objections sustained by the Court; defendant excepted at the time.

Plaintiff and defendant here rest their case.

Defendant demurs at close of entire case, as follows:

The Court instructs the jury that under the law and all the evidence in this case your verdict must be for the defendant. Refused.

Defendant's motion to strike out part of plaintiff's reply is by the Court sustained. Plaintiff excepted at the time.

The Court, at the instance of the plaintiff, gave to the jury instructions numbered 1 and 2. To the giving of each and every one of which the defendant objected and then and there excepted at the time to the action of the Court in giving same.

PLAINTIFF'S GIVEN INSTRUCTIONS.

No. 1.

The Court instructs the jury that it devolves upon the defendant to prove it was necessary, at the time it claims an assessment was made for failure to pay which it claims the insurance was forfeited, to make an assessment, and that an assessment was made by the directors of the defendant, and that said assessment was not for a larger amount than was necessary to pay death losses which had accrued up to that time after giving Frank Barber, deceased, credit for his *pro rata* share of the money on hand in the mortuary fund mentioned in evidence, if you find there was money on hand in that fund, and unless the defendant has so proven, it cannot declare said insurance forfeited on that account. Given.

No. 2.

If you find for the plaintiff you will allow interest on the amount of the policy at 6 per cent per annum from the 8th day of October, 1910, and if you find for plaintiff you will add the several amounts together in your verdict so as to make one aggregate sum.

And the Court further instructs the jury that if you find and believe from the evidence that the defendant before the institution of this suit refused to pay plaintiff the amount of the policy sued upon, and shall further find from all the facts and circumstances shown by the evidence that its refusal to pay was vexatious, that is, without reasonable cause, then you may allow her, in addition to the amount of the policy sued upon and interest, a sum not exceeding 10 per cent of the

amount of the policy sued upon, together with a reasonable attorneys' fee, said attorneys' fee not to exceed the sum of $500.00, and should return a verdict for the aggregate sum if you find the issues for the plaintiff. Given.

The Court at the instance of the defendant gave to the jury instructions numbered 5, 6, 9 and 12. To each and every one of which the plaintiff objected and excepted to the action of the Court in giving the same. Said instructions being as follows:

DEFENDANT'S GIVEN INSTRUCTIONS.

No. 5.

The Court instructs the jury that there is no proof in this case that the safety fund referred to in the policy sued on was at the time of the levy of the mortuary call No. 126 in excess of the sum of one million dollars of par value or the securities in which it was invested.

The jury are instructed that they are not authorized to find that said assessment was illegal or void because of the condition of said safety fund as shown by the proof in this case. Given.

No. 6.

The Court instructs the jury that under the undisputed evidence in this case the amount held by the defendant in the stipulated premium fund and referred to in the evidence as reserve or surplus on stipulated premium policies is a fund held and maintained pursuant to the provisions of contracts in a department other than that in which the policy sued on was issued

and that the existence of said stipulated premium fund, or the amount therein, did not render mortuary call No. 126 illegal or void, and the jury are instructed that they cannot find that said mortuary call No. 126 was illegal or void because of the existence of said stipulated premium fund. Given.

No. 9.

The Court instructs the jury that it is provided by the contract sued upon that the certificate of the secretary that notice has been sent pursuant to the terms of the policy, supported by the affidavit of the person whose duty it was to mail such notice, shall be conclusive proof of the mailing of such notices, and, therefore, the Court instructs you that it is conclusively established by the certificate of the secretary and the affidavit of C. W. Benton, introduced in evidence in this case, that proper notice of mortuary call No. 126 was given to the insured, Frank Barber, and you will so find. Given.

No. 12.

The Court instructs the jury that the purpose of the mortuary fund as provided by the certificate of insurance sued on in this case is for the payment of indemnities matured by the deaths of members and no part of that fund can be diverted to the payment or discharge of the dues. Given.

The defendant asked the Court to give to the jury instructions numbered B, 1, 2, 2A, 3, 3B, 4, 7, 7B, 7A, 8, 10, 11 and 13. Which were by the Court refused. To which action of the Court in refusing each and

every one of said instructions the defendant then and there excepted at the time.

Which said instructions and each of them are as follows:

DEFENDANT'S REFUSED INSTRUCTIONS.

No. 1.

The Court instructs the jury that there is no evidence in this case that the refusal of the defendant to pay the sum sued for was vexatious, and, even though you find for the plaintiff, you will not allow any sum by way of damages or attorneys' fees. Refused.

No. 2.

The Court instructs the jury that under the contract in this case it became and was the duty of the insured, Frank Barber, to pay to the defendant, in addition to any assessments demandable from him, the sum of $6.00 per annum for annual dues; that under and by the terms of said contract said dues were payable in advance, either annually or in monthly or quarterly installments, without notice thereof; that it indisputably appears from the evidence that the insured, Frank Barber, had customarily paid his dues quarterly, in advance, on or about the 1st day of March, June, September and December; and if you believe and find from the evidence that the quarterly dues of $1.50 which thus became due and payable on or about the 1st day of

March, 1910, was not paid or tendered by Frank Barber prior to the death of the said Frank Barber, then the plaintiff cannot recover in this case, and your verdict should be in favor of the defendant.

Refused.

No. 2A.

The Court instructs the jury that under the contract in this case it became and was the duty of the insured, Frank Barber, to pay to the defendant, in addition to any assessments demandable from him, the sum of $6.00 per annum for annual dues; that under and by the terms of said contract said dues were payable in advance either annually or in monthly or quarterly installments; that it indisputably appears from the evidence that the insured, Frank Barber, had customarily paid his dues quarterly in advance on or about the 1st day of March, June, September and December; and if you believe and find from the evidence that the quarterly dues of $1.50, which thus became due and payable on or about the 1st day of March, 1910, was not paid or tendered by Frank Barber prior to the death of the said Frank Barber, then the plaintiff cannot recover in this case, and your verdict should be in favor of the defendant. Refused.

No. 3.

The Court instructs the jury that on or about the 29th day of January, 1910, the officers of the defendant company made and levied against the insured, Frank Barber, as assessment known and designated as Mortuary Call No. 126, by which they demanded of said Frank Barber the sum of $13.19, and if you find that said mor-

tality call was made according to the table of graduated mortality ratios given on the back of the policy sued on, and was made to form or replenish the mortuary fund of the men's division of the safety fund department of said company, and if you find that said assessment was proportioned to the maximum indemnity named in said certificate and was levied in said proportion and according to age against all members holding said certificates, and that said assessment, so levied against said Frank Barber and persons holding similar certificates, was determined by the ages of members and the aggregate indemnity at the dates of such deaths, after calculating and allowing what, in the judgment of the officers of said company was reasonable and proper for the discontinuance of membership, and that the assessment so calculated and apportioned amounted to $13.04, then the Court instructs you that there became due and payable by said Frank Barber, on or about the 1st day of March, 1910, the said sum of $13.04 as an assessment for mortuary purposes, plus the sum of 15 cents for taxes payable to the State of Missouri on said amount if collected, making the total amount due and payable by the said Frank Barber for said assessment and said tax $13.19; and if you find and believe from the evidence that the amount of said assessment was not paid or tendered to the defendant by said Frank Barber or any one for him, prior to the death of the said Frank Barber, then your verdict must be for the defendant.

Refused.

No. 3B.

The Court instructs the jury that, if you should find and believe from all the evidence that on or about the

29th day of January, 1910, the officers of the defendant company made and levied against the insured, Frank Barber, an assessment known and designated as mortality call No. 126, by which they demanded of the said Frank Barber the sum of $13.19, and if you find that said mortality call was made according to the table of graduated mortality ratios given on the back of the policy sued on, and was made to form or replenish the mortuary fund of the men's division of the safety fund department of said company, and if you find that said assessment was proportioned to the maximum indemnity named in said certificate, and was levied in said proportion and according to age against all the members holding said certificates, and that said assessment so levied against the said Frank Barber and persons holding similar certificates was determined by the ages of the members and the aggregate indemnity at the dates of such deaths, after calculating and allowing what, in the judgment of the officers of said company, was reasonable and proper for the discontinuance of membership, and that the assessment so calculated and apportioned amounted to $13.04, and if you further find that 15 cents was the insured's proportionate share of taxes paid to the State of Missouri by defendant, then the Court instructs you that there became due and payable by said Frank Barber, on or about the 1st day of March, 1910, the said sum of $13.04 as assessment for mortuary purposes, plus the sum of 15 cents for taxes payable to the State of Missouri on said amount, if collected, making the total amount due and payable by said Frank Barber for said assessment and said tax $13.19; and if you find and believe from the evidence that the amount of said assessment was not paid or tendered

to the defendant by the said Frank Barber or any one for him, to the death of the said Frank Barber, then your verdict must be for the defendant.

Refused.

No. 4.

The Court instructs the jury that the proof in this case as to the condition of the mortuary fund at the time of the levy of Mortuary Call No. 126 does not authorize the jury to find the mortuary call was illegal or void because of the condition of the mortuary fund, and the jury are instructed that they cannot find that said assessment was illegal because of the condition of said mortuary fund as shown by the evidence in this case.

Refused.

No. 7.

The Court instructs the jury that under the terms of the contract sued upon, and as construed by the courts of Connecticut, it was and is the privilege and duty of the defendant company to maintain in the mortuary fund at all times a sum not to exceed the average amount of one quarterly assessment. The undisputed proof in this case is that the average amount of each of the four preceding quarterly assessments is about $300,000.00 and, inasmuch as it indisputably appears that the sum in the mortuary fund at the time mortuary call No. 126 was levied did not exceed $75,000.00, the Court instructs the jury that they cannot find that mortuary call No. 126 was illegal and void because of the amount of money then in the mortuary fund.

Refused.

No. 7B.

The Court instructs the jury that under the terms of the contract sued upon it was and is the privilege and

duty of the defendant company to maintain in the mortuary fund at all times a sum not to exceed the average amount of one quarterly assessment. The undisputed proof in this case is that the average amount of each of the four preceding quarterly assessments is about $300,000.00 and, inasmuch as it indisputably appears that the sum in the mortuary fund at the time mortuary call No. 126 was levied did not exceed $75,000.00, the Court instructs the jury that they cannot find that mortuary call No. 126 was illegal and void because of the amount of money then in the mortuary fund.

No. 7A.

The Court instructs the jury that under the terms of the contract sued upon it was and is the privilege and duty of the defendant company to maintain in the mortuary fund at all times a sum not to exceed the average amount of one quarterly assessment. The undisputed proof in this case is that the average amount of each of the four quarterly assessments is about $300,000.00, and, inasmuch as it indisputably appears that the sum in the mortuary fund at the time mortuary call No. 126 was levied did not exceed $75,000.00, the Court instructs the jury that they cannot find that mortuary call No. 126 was illegal and void because of the amount of money then in the mortuary fund. Refused.

No. 8.

The Court instructs the jury that it appears from the uncontradicted evidence in this case that the amount of the unpaid death claims in the men's division of the safety fund of the defendant company at the time that Mortuary Call No. 126 was issued, aggregated about

$322,378.48; that it also appears from the uncontradicted evidence that the amount then in the mortuary fund was about $75,000.00. The Court instructs the jury that it was entirely reasonable and proper, under the terms of the contract in suit, for the defendant to replenish or increase said mortuary fund in order that the same, by terms of the contract, might be maintained for the payment of indemnity which should mature by deaths of members in said department, and the Court therefore instructs you that the sum shown to be in the mortuary fund, when Call No. 126 was issued, did not render said call illegal or void.

Refused.

No. 10.

The Court instructs the jury that under the terms of the contract in evidence it was the privilege and duty of the officers of the defendant company to levy and call assessments upon the policy in suit and upon other policy-holders in the department in which said policy was issued for the purpose of maintaining and replenishing the mortuary fund for the payment therefrom of indemnity of insurance matured by deaths of members in the men's division of the safety fund department of said company, and it is wholly immaterial in this case whether the assessment levied was based upon death claims which had already been paid from that fund; and even though the jury should find that some of the death claims upon which Mortuary Call No. 126 was based had been paid prior to the time said call was issued, yet this fact does not render said mortuary call illegal or void, and the jury cannot find that said mortuary call was, for this reason, illegal or void.

Refused.

No. 11.

The Court instructs the jury that the burden rests upon the plaintiff to prove by the greater weight of all the credible testimony that he paid the dues and assessments which were due March 1st, 1910, prior to his death under the provisions of the policy sued on, and unless she has so proven, your verdict will be for the defendant. Refused.

No. 13.

The Court instructs the jury that if you find from the evidence that Frank Barber did not pay or cause to be paid any call after the payment of call No. 125, during his lifetime, and took no steps to keep his certificate in force, then the Court charges you that Frank Barber had abandoned his certificate and his membership, and this plaintiff cannot recover, and your verdict should be for the defendant.

The Court of its own motion gave to the jury instruction and forms of verdict. To which action of the Court in giving each and every one of which the defendant then and there excepted at the time.

And thereafter, on the 3rd day of January, 1913, the jury returned into open court the following verdict:

VERDICT.

We, the jury, find the issues in favor of the plaintiff, and assess her damages at the sum of $2,276.00, together with the sum of $200.00 for vexatious delay, and the sum of $500.00 for attorneys' fees, making in the aggregate the sum of $2,976.00.

R. G. McVey,
Foreman.

And on said January 3rd, 1913, and immediately after the return of said verdict, comes now the defendant and says that no judgment should be entered in this cause against defendant, because the policy or contract of insurance provides that death losses shall be paid out of the mortuary fund and not otherwise, and said defendant is only the trustee in charge of said fund, and for that reason is not personally liable.

Which objection was by the Court overruled.

Defendant excepted at the time.

And thereafter, on January 3rd, 1913, and within four days from the rendition of the above verdict, the defendant filed herein and presented to the Court its motion for a new trial; which is as follows:

MOTION FOR NEW TRIAL.

In the Circuit Court within and for the County of Johnson, State of Missouri.
October Term, 1912.

Rosa Barber,
Plaintiff,
vs.
Hartford Life Insurance Company,
Defendant.
No. 4619.

Now comes the defendant and moves the Court to set aside and for naught hold the verdict rendered in the above-entitled cause on the 3rd day of January, 1912, in this cause in this court and grant to it a new trial of said cause, for the following reasons, to-wit:

1. The verdict in said cause is against the evidence, against the weight of the evidence and against the law under the evidence.

2. The verdict was for the wrong party.

3. The Court erred in admitting incompetent, irrelevant and immaterial evidence offered by the plaintiff.

4. The Court erred in rejecting competent, relevant and material evidence offered by the defendant.

5. The Court erred in overruling the demurrer to the evidence offered at the close of the plaintiff's case.

6. The Court erred in refusing defendant's demurrer and peremptory instruction offered at the close of all the evidence.

7. The Court erred in the instructions given to the jury at the instance of the plaintiff, numbered 1 and 2.

8. The Court erred in refusing instructions numbered 1, 2, 2a, 3, 3b, 4, 7, 7a, 7b, 8, 10, 11 and 13, asked by the defendant.

9. The damages assessed by the jury are excessive.

10. The Court erred in failing to construe the terms of the policy and declare the law applicable thereto.

11. The Court erred in receiving the verdict of the jury assessing an attorney's fee, when there was no finding by the jury that defendant had been guilty of any vexatious delay, or assessing any damage for vexatious delay.

12. The Court erred in giving the jury forms of verdict Nos. 1 and 2.

13. The Court erred in giving to the jury form of verdict No. 1, upon which they returned their verdict, for the reason that said form expressly authorized the jury to allow to plaintiff an attorney's fee and damages, and gave them no alternative to find one without the other.

14. The Court erred in giving to the jury instructions of its own motion in regard to the forms of verdict.

15. The Court erred in excluding from evidence exemplified copy of judgment roll in the Dresser case ren-

dered by the New Haven County Connecticut Superior Court.

16. The Court erred in not construing said certificate or policy sued on in accordance with the decision of said Court.

17. The Court erred in excluding from evidence the official report of the decision of the Supreme Court of Errors of the State of Connecticut, in said Dresser case, construing the contract in question as to the safety fund and mortuary fund in said contract provided for.

18. The Court erred in refusing to give full faith and credit to the decision of a sister state as to its construction of the contract in question as required by the Constitution of the United States, and in not construing the contract sued on in accordance with said decision, and in construing said contract in direct conflict with the rule laid down in said decision.

19. The Court erred in giving instruction No. 2, which was in direct conflict with the provisions of the contract sued on.

20. The verdict resulting from the said instruction of the Court, practically directing the jury to find for plaintiff, impairs the obligation of the contract sued on, in violation of Section 10, of Article I, of the Constitution of the United States.

21. The action of the Court in giving said instruction No. 2 had the effect of impairing the obligation of the contract of insurance counted upon in plaintiff's petition in violation of said Section 10, of Article I, of the Constitution of the United States.

22. Said action of the Court denied to defendant the equal protection of the law, and deprived it of its property without due process of law, in violation of Section

1 of the Fourteenth Amendment of the Constitution of the United States, and violated Section 30, of Article II, of the Constitution of Missouri.

23. The construction by the Court put upon the contract of insurance sued on and involved in said instruction No. 2 to the jury took away from the defendant its rights inherent in said contract and impaired the obligation thereof in violation of Section 10, of Article I, of the Constitution of the United States.

24. The Court erred in submitting the case to the jury upon issues not made by the pleadings and instructing the jury to find for the plaintiff upon evidence not within the issues, and contrary to the probative force of the evidence, this action of the Court and the verdict and judgment thereon, impaired the obligation of the contract of insurance in suit in violation of Section 10, of Article I, of the Constitution of the United States, and also deprived this defendant of its property without due process of law, and denied it the equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and also violated Section 30, of Article II, of the Constitution of Missouri.

25. The Court erred in entering a personal judgment against this defendant instead of directing the payment of same out of any fund it might have to the credit of the mortuary fund as provided by the contract.

Wherefore, defendant asks the Court to set aside said verdict and award a new trial of said cause.

JONES, HOCKER, HAWES & ANGERT,
J. W. SUDDATH & SON,
JAMES C. JONES, JR., and
GEO. HAID,
Attorneys for Defendant.

And thereafter, on January 3rd, and within four days from the rendition of the above verdict the defendant filed herein and presented to the Court its motion in arrest of judgment; which is as follows:

MOTION IN ARREST OF JUDGMENT.

In the Circuit Court within and for the County of Johnson, State of Missouri.
October Term, 1912.

Rosa Barber,
Plaintiff,
vs.
Hartford Life Insurance Company,
Defendant.
No. 4619.

Now comes defendant and moves the Court to arrest the judgment in this cause for the following reasons, to-wit:

1. That upon the record said judgment is erroneous.
2. That the petition does not state facts sufficient to constitute a cause of action against the defendant.
3. The verdict of the jury is not responsive to the issues made by the pleading.
4. That the judgment should not go against this defendant personally, but should be against the mortuary fund of which it is trustee.

JONES, HOCKER, HAWES & ANGERT,
JAMES C. JONES, JR.,
GEO. HAID and
J. W. SUDDATH & SON,
Attorneys for Defendant.

And thereafter, on January 3rd, 1913, defendant's motion for a new trial and defendant's motion in arrest of judgment were by the Court taken up and both

motions overruled; to which action of the Court in overruling the motion for a new trial and in overruling the motion in arrest of judgment the defendant then and there excepted at the time.

And thereafter, on January 3rd, 1913, the same being during the October Term, 1913, of this court, the defendant filed herein and presented to the Court its affidavit for an appeal, which said appeal was by the Court duly allowed and granted to the Supreme Court of the State of Missouri, and defendant given leave to file bill of exceptions by May 1st, 1913.

And thereafter, on the 28th day of April, 1913, the time for filing bill of exceptions was extended by stipulation until September 1st, 1913.

DEFENDANT'S PROPOSED CORRECTIONS TO BILL OF EXCEPTIONS.

"State of Missouri, } ss.
County of Johnson. }

In the Circuit Court of Johnson County, Missouri.

Rosa Barber,
Plaintiff,
vs.
Hartford Life Insurance Company,
Defendant.
} No. 4619.

"Before the time for the filing of its bill of exceptions had elapsed, defendant offered and proposed the following changes and corrections in its bill of exceptions as prepared by the stenographer:

"1st. That the figure '14' on page 104 of the bill be changed to '12' (Rec., p. 214).

"2nd. That the word 'men's' on page 127 of the bill be changed to 'women's' (Rec., p. 235, bottom).

"3rd. That the words 'safety fund department' at

the bottom of page 162 of the bill be changed to 'Security Company' " (Rec., p. 270, top).

Thereafter plaintiff filed the following objections to the corrections and changes as proposed by the defendant in its bill of exceptions:

PLAINTIFF'S OBJECTIONS TO PROPOSED CORRECTIONS OF BILL OF EXCEPTIONS.

"1st. The changing of the figure '14' to '12' on page 104 of the bill should not be made. It is material and not a mistake and we insist that the change not be made. See page 87 of the original deposition.

"2nd. The changing of the word 'men's' to 'women's' on page 127 of the bill should not be made. It is material and not a mistake and the original deposition must control. See page 109 of the deposition.

"3d. The plaintiff objects to the interlineation of the words 'Security Company' before the words 'safety fund department' at the bottom of page 162 of the bill. This interlineation is material and does not appear in the original deposition. See page 145 of the deposition."

Thereafter, the Court having considered the changes and corrections as proposed by the defendant and the plaintiff's objections thereto, held that the plaintiff's objections were well taken and refused to sign defendant's bill of exceptions with the proposed changes and corrections incorporated therein.

Thereupon defendant withdrew its proposed changes and corrections and offered its bill of exceptions for signature without its proposed changes and corrections, to which plaintiff had objected.

And now comes the defendant and presents to the

Court this its bill of exceptions and prays that the same may be signed and made a part of the record herein, which is accordingly done this the 16th day of August, 1913.

C. A. CALVIRD,
Special Judge within and for Johnson County, Missouri, Circuit Court.

TRANSCRIPT FILED.

In due time appellant caused to be filed in the office of the Clerk of the Supreme Court, with the $10 docket fee required by law, a certified copy of the transcript of judgment, together with the order granting the appeal.

JONES, HOCKER, HAWES & ANGERT,
Attorneys for Defendant-Appellant.

APPENDIX.

The exemplification of the judgment roll in case of Chas. N. Dresser *et al.* v. Hartford Life Insurance Company *et al.*, which was offered in evidence by the defendant (see Defendant's Exhibit 8, Rec., p. 303), is as follows:

STATE OF CONNECTICUT,
NEW HAVEN COUNTY,
SUPERIOR COURT.

I, Alfred N. Wheeler, Clerk of the Superior Court within and for New Haven County, in the State of Connecticut, and keeper of the records and seal thereof, hereby certify that the above and foregoing is a true copy of the record on appeal from this court to the Supreme Court of Errors of the State of Connecticut, at its October Term, 1907, including the pleadings on file, memoranda of decisions, judgment and appeal in the case of Charles H. Dresser *et al.* v. The Hartford Life Insurance Company *et al.*; also all pleadings, motions, stipulations of counsel, memoranda of decision, applications, receipts, certain resolutions of the General Assembly of Connecticut, motions for disclosure and pleadings thereto, cross-complaints and amended cross-complaints and pleadings thereto, withdrawal of cross-complaint, and the final judgment of Shumway, J., and Curtis, J., both being dated March 23, 1910, and all filed in this court after the said cause was remanded for trial to this court by said Supreme Court of Errors, and constituting all the files and records of this court down to and including the date of said judgments in the aforesaid cause.

In testimony whereof, I hereunto set my hand

and affix the seal of said court, at New Haven, in said county, this 31st day of December, 1912.

(SEAL) ALFRED N. WHEELER,
Clerk.

State of Connecticut, } ss.
New Haven County. }

I, Edwin B. Gager, Presiding Judge of the Superior Court for the State of Connecticut, in said county, do hereby certify that Alfred N. Wheeler, whose name is above written and subscribed, is and was at the date thereof, Clerk of said Superior Court, duly appointed, commissioned and sworn, and keeper of the records and seal thereof, and that the above certificate by him made, and his attestation of record thereof, is in due form of law.

In testimony whereof, I have hereunto set my hand this 31st day of December, 1912.

EDWIN B. GAGER,
Presiding Judge.

State of Connecticut, } ss.
New Haven County. }

I, Alfred N. Wheeler, Clerk of the Superior Court of the State of Connecticut, within and for New Haven County, and keeper of the seal thereof, hereby certify that the Honorable Edwin B. Gager, whose name is within written and subscribed, was on the thirty-first day of December, 1912, and now is Presiding Judge of said court, duly appointed, commissioned, sworn and qualified; and that I am well acquainted with his handwriting and official signature and know and hereby certify the same within written to be his.

In testimony whereof, I hereunto set my hand, and affix the seal of said court at the City of New Haven, in said county and State, on this 31st day of December, 1912.

(SEAL) ALFRED N. WHEELER,
Clerk.

333–336 In the Supreme Court of Missouri, Division No. 1, October Term, 1915.

No. 17664.

ROSA BARBER, Plaintiff-Respondent,
vs.
HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

Appeal From the Circuit Court of Johnson County, Hon. C. A. Calvird, Special Judge.

Appellant's Additional Abstract of the Record.

As respondent has deemed the annual report filed by the defendant company with the Insurance Department of the State of Missouri for the year ending December 31, 1909, to be material to the issues of this case, and as counsel for respondent has incorporated in the additional abstract only that portion of the report which they deem material, we have set out the two pages of the report from which the items set forth by the respondent are taken, one page being the assets reported by the company and the other being its liabilities, surplus and other funds.

337 *Annual Statement of the Hartford Life Insurance Company.*

IV.—Ledger Assets.

1.	Book value of real estate, per Schedule A.....		$218,731.00
2.	Mortgage loans on real estate, per Schedule B, first liens, $1,709,369.00; other than first liens, none		1,709,369.00
3.	Loans secured by pledge of bonds, stocks or other collateral, per Schedule C.....		10,000.00
4.	Loans made to policy-holders on this company's policies assigned as collateral.....		314,542.06
5.	Premium notes on policies in force, of which none is for first year's premiums.....		42,281.49
6.	Book value of bonds, $542,677.15; and stocks, $168,888.08; per Schedule D.....		711,565.23
7.	Cash in company's office.....	$3,653.85	
8.	Deposits in trust companies and banks, not on interest.....	23,893.68	
9.	Deposits in trust companies and banks, on interest.....	284,493.82	
			312,041.35
10.	Bills receivable, $22,556.91; agents' balances (debit, $11,987.66; credit, $134.87); net, $11,852.79		34,409.70
11.	Safety funds in Security Company of Hartford		1,166,354.29
12.	Total Ledger Assets, as per balance on page 3.....		$4,523,294.12

Non-ledger Assets.

13. Interest due, $485.92, and accrued, $40,748.61, on mortgages, per Schedule B	$41.234.53	
14. Interest due, $4,000.00, and accrued, $4,308.05, on bonds, per Schedule D, Part 1	8,308.05	
15. Interest due, $—, and accrued, $—, on collateral loans, per Schedule C, Part 1	.....	
16. Interest due, $777.46, and accrued, $—, on premium notes, policy loans or liens	777.46	
17. Interest due, $—, and accrued, $—, on other assets	.....	
18. Rents due, $498.77, and accrued, $—, on company's property or lease	498.77	
19. Total interest and rents due and accrued		50,818.81
20. Market value of real estate over book value, per Schedule A		37,269.00
21. Market value (not including interest in Item 14) of bonds and stocks over book value, per Schedule D		.....
22. Due from other companies for losses or claims on policies of this company, reinsured		6,355.71

338

	(1) New Business.	(2) Renewals.	
23. Gross premiums due and unreported on policies in force December 31, 1909 (less reinsurance premiums)	$1,089.28	$36,437.14	
24. Gross deferred premiums on policies in force December 31, 1909 (less reinsurance premiums)	6,596.54	62,392.08	
25. Totals	$7,686.82	$98,829.22	
26. Deduct loading	5,380.08	19,765.85	
27. Net amount of uncollected and deferred premiums	$2,305.74	$79,063.37	81,369.11
28. All other assets (give items and amounts): Net premiums in course of collection			.....
29. Safety Fund Dep't			185,000.00
30. Accrued interest Safety Fund Dep't			13,311.33
31.			.....
32.			.....
33. Gross Assets			$4,897,418.08

Deduct Assets Not Admitted.

34. Company's stock owned, $—; loans on —.....	$.....	
35. Supplies, stationery, printed matter, $—; furniture, fixtures and safes, $—	.....	
36. Commuted commissions, $—; agents' debit balances, gross, $11 987.66	11,987.66	
37. Cash advanced to or in the hands of officers or agents	.....	
38. Loans on personal security, endorsed or not, $—; bills receivable, $22,556.91	22,556.91	
39. Premium notes and loans on policies and net premiums in item 27 in excess of the net value of their policies	.....	
40. Book value of Ledger Assets over market value, viz: Stock Department	35,636.43	
41. Safety Fund Department	87,695.94	
42.	.....	
		157,876.94
43. Admitted Assets		**$4,739,541.14**

V.—Liabilities, Surplus and Other Funds.

Net present value of all the outstanding policies in force on the 31st day of December, 1909, as computed by the Company on the following tables of mortality and rates of interest, viz:			
1. Actuaries' table at 4 per cent on* policies issued prior to Jan. 1st, 1901	$610,103.00		
Same for reversionary additions.	604.00		
		$610,707.00	
339			
2. American Experience table at 3½ per cent on* policies issued since Jan. 1st, 1901.....	$1,339,472.00		
Same for reversionary additions.	.....		
		1,339472.00	
3. American Experience table at — per cent on*.....	$.....		
Same for reversionary additions.	.....		
		.....	
4. Other tables and rates, viz:*			
.....	$.....		
.....	.....		
.....	.....		
.....	.....		
.....	.....		
.....	.....		
Same for reversionary additions.	.....		
		.....	
5. Net present value of annuities (including those in reduction of premiums). Give tables and rates of interest, viz:			
.....	$.....		
.....	.....		
.....	.....		
.....	.....		
		.....	
Total		$1,950,179.00	
6. Deduct net value of risks of this company reinsured in other solvent companies.....		5,219.00	
		$1,944,960.00	
7. Reserve to provide for health and accident benefits contained in life policies.....		.....	
8. Net Reserve			$1,944,960.00
9. Present value of amounts not yet due on supplementary contracts not involving life contingencies, computed by the Company's Actuary.....			10,896.00
10. Liability on policies canceled and not included in "net reserve" upon which a surrender value may be demanded..			.....
11. Claims for death losses due and unpaid.....		$166.67	
12. Claims for death losses in process of adjustment, or adjusted and not due.....		151,254.20	
13. Claims for death losses which have been reported and no proofs received.....		90,500.00	
14. Claims for matured endowments due and unpaid		.....	

15.	Claims for death losses and other policy claims resisted by the company	.....
16.	Due and unpaid on annuity claims involving life contingencies	.....
17.	Total Policy Claims	241,920.87
18.	Due and unpaid on supplementary contracts not involving life contingencies	.....
19.	Dividends left with the company to accumulate at interest, and accrued interest thereon	548.10
340		
20.	Premiums paid in advance, including surrender values so applied	6,517.70
21.	Unearned interest and rent paid in advance	9,952.20
22.	Commissions due to agents on premium notes when paid	.....
23.	Commissions to agents, due or accrued	866.80
24.	"Cost of collection" on uncollected and deferred premiums, in excess of the loading thereon	.....
25.	Salaries, rents, office expenses, bills and accounts due or accrued	2,092.39
26.	Medical examiners' fees, $1,415.50, and legal fees, $547.60, due or accrued	1,963.10
27.	State, county and municipal taxes due or accrued, including balance on hand to pay taxes Safety Fund Dep't	34,913.69
28.	Advances by officers or others on account of expenses of organization or otherwise	.....
29.	Borrowed money, $—, and interest thereon $—	.....
30.	Unpaid dividends to stockholders	.....
31.	Dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums	22,155.40
32.	Dividends declared on or apportioned to annual dividend policies payable to policy-holders during 1910, whether contingent upon the payment of renewal premiums or otherwise	3,566.82
33.	Dividend declared on or apportioned to deferred dividend policies payable to policy-holders during 1910	9,612.19
34.	Amounts set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies, not included in Item 33	137,651.26
35.	Reserve, special or surplus funds not included above (give items and amounts separately, and state for what purpose each of said funds is held):	
36. 37.	Dividends declared on deferred dividend policies, payable to policy-holders subsequent to 1910	6,176.69
38.	.....	.....
39.	All other liabilities (give items and amounts):	
40.	Safety Fund, Men's Division, principal account, $954,060.50; income account, $11,456.94;	
41.	Safety Fund, Women's Division, principal account, $124,597.85; income account, $1,854.39;	
42.	Mortuary Fund, Men's Division, $74,772.25; Women's Division, $84,155.38;	
43.	*Reserve on stipulated premium policies, $1,565.00; surplus on stipulated premium policies, $38,120.89	1,290,583.20
44.	Capital stock	500,000.00
45.	Unassigned funds (surplus)	515,164.73
46.	Total	$4,739,541.14

* State definitely the dates of issue and class of policies covered by each basis of valuation.

341-630 As respondent has raised some questions about the completeness of the judgment roll in the case of Dresser et al. v. Hartford Life Insurance Company, et al., we attach herewith and as a part of this Additional Abstract the complete judgment roll of the Dresser case, which was offered in evidence in this case (Rec., p. 303) as defendant's Exhibit 8.

JONES, HOCKER, SULLIVAN & ANGERT,
J. W. SUDDATH & SON,
Attorneys for Appellant.

631 *Assignment of Errors.*

I.

The Court erred in refusing to admit in evidence the judgment roll of the Superior Court of New Haven County, in the case of Dresser et al. v. Hartford Life Insurance Company et al. (Rec., pp. 303-306), duly exemplified in accordance with the Act of Congress made and provided (Rec., p. 327), and particularly the decrees of the Superior Court of New Haven County (Shumway J., and Curtis, J.), in the case of Dresser et al. v. Hartford Life Insurance Company et al. (Rec., pp. 22-49), in which there was involved and decided a controlling fact material to the determination of this cause, to which ruling the defendant then and there excepted and by which ruling the Court failed to give full faith and credit to such decrees and judgment, as is required by Article IV, Section 1 of the Constitution of the United States.

II.

The Court erred in refusing to direct a verdict for the defendant at the close of the plaintiff's case and at the close of the whole case as requested.

III.

There is no evidence to support the judgment in favor of the plaintiff.

IV.

The Court erred in giving to the jury the first instruction requested by the plaintiff (Rec., p. 307), for the reason that
632 it puts upon the defendant the burden of showing and permits the jury to find that it was "necessary" for the defendant to levy the assessment, or call 126; that such call or assessment "was made by the directors of the defendant"; that such call or assessment "was not for a larger amount than was necessary to pay the death losses which had accrued up to that time, after giving Frank Barber, deceased, credit for his pro rata share of the money on hand in the mortuary fund mentioned in evidence".

V.

The Court erred in giving to the jury instruction No. 2 (Rec., p. 307) requested by the plaintiff, for the reason that the statute of Missouri, Section 7068, R. S. Mo. 1909, authorizing the imposition of damages and attorneys' fees, is unconstitutional and void because in violation of Section 10, Article I of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in violation of Section 30 of Article II and Section 10 of Article II of the Constitution of Missouri, and because the construction thereof by the courts of this State constitute a rule of judicial construction violative of said provisions of said State and Federal constitutions and because the application of said statute to the facts of this case denies the defendant due process of law as guaranteed to it by the Federal and State constitutions.

VI.

The Court erred in refusing to give to the jury instructions numbered 1, 2, 2A, 3, 3B, 4, 7, 7A, 7B, 8, 10, 11 and 13, requested by the defendant.

633

VII.

The judgment rendered against the defendant by the court below deprives the defendant of its property without due process of law contrary to and in violation of the Fourteenth Amendment of the Constitution of the United States for the reason that the judgment is against the defendant personally, whereas the certificate sued on by the plaintiff herein expressly provides that all indemnity matured by deaths of members holding certificates in the Safety Fund Department of the defendant company shall be paid out of the mortuary fund and not otherwise, the defendant being merely a trustee of the mortuary fund, administering the same in accordance with the provisions of the certificate, and the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser et al. v. Hartford Life Ins. Co. et al.

634 In the Supreme Court of Missouri, October Term, 1915, January Call, 1916.

Thereafter, to-wit, on March 30th, 1916, the following further proceedings were had and entered of record in the said cause:

"ROSA BARBER, Respondent,
vs.
HARTFORD LIFE INSURANCE COMPANY, Appellant.

Appeal from the Circuit Court of Johnson County.

Now at this day come again the parties, aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of

and concerning the premises doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Johnson County rendered, be in all things affirmed, and stand in full force and effect, and that the said respondent recover against the said appellant her costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures as follows:

635 In the Supreme Court of Missouri, Division No. 1, October Term, 1915.

No. 17664.

ROSA BARBER, Respondent,
vs.
HARTFORD LIFE INSURANCE COMPANY, Appellant.

Appeal from the Circuit Court for Johnson County.

Statement.

This is an action at law on policy No. 174,416 issued by the defendant September 4, 1893 insuring the life of Frank Barber for $2,000.00 for the benefit of the plaintiff who was then his wife and is now his widow, and for damages for vexatious refusal to pay the loss under the provisions of section 7068 of the revised Statutes of 1909. Mr. Barber died June 5, 1910. There was a judgment in the circuit court for $2,976, including $200.00 damages and $500.00 attorney's fee awarded by the jury for vexatious refusal to pay, from which this appeal is taken. The defendant is a life insurance Company of Connecticut. It had a business department called the "Safety Fund Department," which was again divided into the "Men's Division" and "Women's Division," which issued policies payable on the assessment plan, and this policy was of course in the Men's Division," and was called a "Certificate of Membership Safety Fund Department."

The answer pleads that this certificate was conditioned upon the payment of periodical assessments; that on January 29, 1910,
636 an assessment designated as "Call 126" was levied on it against Barber for $13.00 with dues amounting to $1.50, which became due by the terms of the certificate on March 1, 1910; that Mr. Barber failed to pay it on or before March 20th, to which time it had been extended; and in consequence thereof the insurance was, by the terms of the certificate, forfeited. The issues in the case grow out of this circumstance. It also pleads, in effect, that an action had been brought in the New Haven County Superior Court of Connecticut, by one Dresser, holding a similar certificate of membership in the Safety Fund Department of defendant, on his own behalf, as well as on behalf of all others similarly situated, including the plaintiff, wherein the rights of plaintiff were fully adjudicated; that the mortuary fund of said department and the trust thereby created is

being administered strictly in accordance with the terms of said certificate and trust as construed and adjudicated by said court, whereby defendant is without authority to pay out of said mortuary fund the amount of any certificate of membership where, as in this case, the member has failed or refused to pay the assessment levied against him to maintain said fund. It also denied the right of plaintiff to recover the damages and attorneys' fee sued for, because the provisions of said section 7068 authorizing the imposition of such damages and attorneys' fee are unconstitutional and void as being in violation of section 10 article 1, of the Constitution of the United States, and of section 1 of the Fourteenth Amendment thereto, and of section 30 of article 2, and of section 10 of article 2 of the Constitution of Missouri; and because the construction thereof by the courts of this state constitutes a rule of judicial construction violative of said provisions of the State and Federal Constitutions, and because said section 7068, if applied to this case, and in its application to the facts of this case, denies the defendant due process of law as guaranteed by the State and Federal Constitutions.

637 These matters were all put in issue by replication.

The defendant on the trial offered in evidence the record in the Dresser case duly certified under the act of Congress in such cases made and provided, which was on plaintiff's objection, excluded to which defendant duly excepted.

The policy sued on, so far as applicable to the questions in this case, is as follows: "In consideration of the representations, agreements, and warranties made in the application herefor, and of the Admission Fee paid; and of Three Dollars per annum on each $1,000 of the Indemnity herein provided for, for Expense Dues, to be paid as hereinafter conditioned, and of the further payment of all Mortality Calls proportioned to the said Indemnity, levied against the herein named member to form a Mortuary fund for the payment of all Indemnity matured by deaths of members, and to create a Safety Fund as hereinafter described, which mortality calls, to be levied upon all the members in the department wherein this Certificate is issued whose Certificates are in force at the date of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate Indemnity of the dates of such deaths, with due allowance for discontinuance of membership, (one-third of the proceeds of such mortality calls to be applied toward said Safety Fund until the sum of Ten Dollars on each $1,000 Indemnity aforesaid shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon) does hereby issue this Certificate of Membership in its Safety Fund Department to Frank Barber (herein called the member) of St. Louis County of City of St. Louis State of Missouri with the following agreements:

"That ninety days from the receipt by the President or Secretary of said Company of satisfactory proofs, in accordance with forms furnished upon notice of death and with full information as to the manner and cause of the death of the herein named member

638 while this Certificate is in force, all the conditions hereof having been conformed to by the member, upon presentation

and surrender of this Certificate properly receipted, there shall be due and payable, out of the aforesaid Mortuary Fund and not otherwise, the Indemnity of Two Thousand Dollars (less the balance unpaid, if any, of the stipulated contribution to said Safety Fund, with fifty per cent, added, together with the unpaid installments of annual expense dues and any mortality or other charge against the member payment of which is not matured,) to his wife Rosa Barber if living otherwise to his legal representatives. All such payments to be made at the Home Office of said Company in lawful money of the United States.

"That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall make a semi-annual division of the net interest received therefrom by it pro rata among all the holders of Certificates in force in said Department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars, all subsequent receipts therefor shall be divided by the said Company in like manner as the interest."

The department in which this certificate was issued was organized about 1879, on the following plan: Each person applying for insurance under the plan was to pay an admission fee of $8.00 for $1,000.00; $12.00 for $2,000.00; $15.00 for $3,000.00; $18.00 for $4,000.00; $20.00 for $5,000.00; $40.00 for $10,000.00, and the medical examination fee estimated at $3.00 to be paid to the physician; also to pay annually for the sole purpose of paying all expenses of said insurance $3.00 for each $1,000.00 of insur-
639 ance; and also to pay as mortuary payments assessed to pay death losses an amount graduated according to the policyholder's age at the time of the assessment, the amount of his policy and the aggregate indemnity in force with the Company at the time of each death, with due allowance for discontinuance of membership, one-third on each call to be applied toward a safety fund until the sum of $10.00 per $1,000.00 had been paid "when the basis of all subsequent mortality calls shall be two-thirds only" of the amount named in the table endorsed on the certificate. This safety fund was to be deposited with the "Security Company," a corporation formed to take care of it for an additional compensation out of this income. The earnings of this fund after it should reach $300,000.00 and all contributions to it after it should reach $1,000,000.00 in United States bonds par value were to be divided among certificate holders of five years' standing in proportion to the amount of their certificates, and if the aggregate amount of the certificates should fall below $1,000,000 the principal of the fund should be similarly divided. The fund accumulated rapidly, and in 1889 the Security Company had ceased to buy United States bonds, and in that year, notwithstanding its contract with policy holders, the appellant se-

cured the passage of a resolution by the legislature of Connecticut authorizing the investment of the fund in other securities. Under this permission the fund was invested in other securities, including stocks of the New York, New Haven and Hartford and St. Joseph, Denver City and Southern railroad companies and of Hartford banks. In 1899 they ceased the issue of certificates in this department and thus practically put an end to the influx of ten dollar contributions which, the fund having reached its maximum of one million, must be divided among the certificate holders. Things were in this condition when the Dresser suit was instituted in 1907 and went to final judgment March 23, 1910. The court ruled that the act of 1889 was unconstitutional and void as impairing the obligation of
640 the contract of the Company with the certificate holders and found that as a result of investments in other securities then United States bonds losses had been incurred so that the actual value of the fund remaining was somewhat less than $1,000,000.00; that excessive charges had been made by the security company for its management, so that the court required over $40,000.00 of this compensation to be returned and distributed to the certificate holders. It also found that, although the Company had levied assessments to cover the full amount of the certificates for each death during the previous quarter, they deducted, in making payment, from the face of such certificates a certain proportion of the assessment that would have been due from the holder had he survived the quarter, so that there was a margin arising between the amount of the losses paid and the amount of losses assessed for, which had accumulated in the mortuary fund and had been used for the payment of losses in advance of the receipt of the assessments by which it was reimbursed. This accumulation amounted to "many thousands of dollars," which belongs to the certificate holders. The court held that it was proper that the defendant should hold some such fund for the purpose of enabling it to pay losses promptly, but that it was not necessary that the Company should hold more than the amount of one average quarterly assessment for the previous year.

After reciting these facts the judgment proceeded:

"Whereupon it is adjudged and decreed, that said mortuary fund of the Men's Division arising from the excess of the amount received for quarterly assessments over the amount necessary for the payment of losses for said quarter, as above described, or from any other sources, together with all income or interest thereon belongs to the certificate-holders in the Men's Division of the Safety Fund Department, and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in
641 said department. It then ordered that "any excess in said fund above the average of the four preceding quarterly assessments in said Men's Division shall be distributed to the certificate holders in diminuation of assessments."

The call in question is as follows:

"HARTFORD LIFE INSURANCE COMPANY,
HARTFORD, CONN., January 29th, 1910.

Special Notice of Quarterly Call No. 126.

"Your next Quarterly Call will fall due and be payable June 1, 1910.

Frank Barber, 4201 Pleasant St., St. Louis, Mo.

2-174416. 15.

"This call which will be due Mar. 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list), Benefits, $322,378.48 expenses on your policy, as follows:

"For Mortality Call	$13.09
For Quarterly Dues to June next	1.50
Credit	$14.59
Dividend to be applied if payment be made	1.40
Amount Due	$13.19

"Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

"Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

"Return this notice with remittance payable to Hartford Life Insurance Company.

"Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

"See over for Special Notice.

842 "Special Notice.

"If the payment of the above Quarterly Call is not received at this office on or before Mar. 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

"Every member whose payment does not reach this office on or before Mar. 5, 1910, will be obliged to pay fifty cents fee in order to have the policy unconditionally reinstated.

"After Mar. 20, 1910, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of reinstatement."

The credit of $1.40 is Barber's share of the excessive compensation

taken by the Security Company for the care of the safety fund. The amount of this fund for which charges were being made up to and at the time of the Dresser trial, was more than $1,000,000.

The assessment in question was made as of December 31, 1909. At that time all of the 119 death losses enumerated in the notice had been paid except fifteen, aggregating $41,000.00, and there was remaining in the mortuary fund $74,938.92; and the interest on the safety fund was paid into it on the same date, making an aggregate of $94,386.31 then in the fund. The defendant introduced evidence showing that there were unpaid death losses amounting to $128,166.67 or more than $87,000.00 in addition to those included in this assessment still unpaid, and accounted for this fact by saying that the time of payment of losses included in the previous assessment had been extended, so that the collections for the payment of these losses had not yet been made.

The appellant asked upon the trial and the court refused an instruction to the effect if there was no evidence that the refusal of the defendant to pay the sum sued for was vexatious, and for
643 that reason they should not allow any sum for damages or attorney's fees should they find for the plaintiff. It also, both upon the trial and in its motion for a new trial, contended that the action of the court in excluding the record in the Dresser case violated section 1 article 4 of the Constitution of the United States providing that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Such further reference will be made to the record as seems to be necessary.

Opinion.

1. The defendant pleaded in its answer that the provision of section 1768 of the Revised Statutes of Missouri 1909 was unconstitutional and void and therefore could not be made the basis of any recovery for damages and attorney's fees in this suit. This claim has been rejected by this court and the Supreme Court of the United States until it has become too stale to serve as a foundation for our jurisdiction. (Keller vs. Home Life Insurance Co., 198 Mo., 440; Fidelity Mutual Life Association vs. Mettler, 185 U. S., 308; Iowa Life Insurance Co. vs. Lewis, 187 U. S., 335; Farmers Etc. Ins. Co. vs. Dobney, 189 U. S., 301; Fraternal Mystic Circle vs. Snyder, 227 U. S., 497). It is probably in view of these repeated decisions and others to the same effect that the appellant has not favored us with a brief or argument upon this point.

Our jurisdiction rests solely upon the point that the trial court erred in rejecting the record of a judgment of the Superior Court of Connecticut for New Haven County in the case of Ibs and others, holders of like certificates in the safety fund department of defendant, suing on behalf of themselves and of all others similarly situated, vs. this defendant, the Security Company named in the certificate here sued on, together with the members of the board of direc-

tors for the time being. This case went to final judgment in the Connecticut Court March 23, 1910. By this judgment the court attempted to make some radical changes in the contract here
644 sued on and this attempt, applicable to this case in some respects which we shall notice, has received the endorsement of the Supreme Court of the United States in Hartford Life Insurance Company vs. Ibs, 237 U. S. 662.

The grounds upon which the plaintiff objected to the admission of this record were many, but its exclusion fairly raised the constitutional question whether or not, in that action, full faith and credit was given to the record of a judicial proceeding in the Connecticut Court as required by the Federal Constitution. Among these objections were some relating to its certification and completeness, but these are shown to have been groundless by an additional abstract. Objection was also made that the judgment was not properly pleaded as an adjudication by the Connecticut court of the matter involved. This objection would probably have been well taken had it been directed against the answer before trial, but its effect, so far as applicable to the case, was generally stated and ought not to have been allowed to interfere with the trial by forcing an amendment during its progress. We think the constitutional point was well taken and shall consider the case in the light of the rejected evidence.

2. The legal maxim that the law abhors a forfeiture carries with it its own reasons. One who, like this respondent, has for seventeen years regularly contributed to a fund for the idemnity of others, ought not to be deprived of all the benefit which he himself was to receive as his compensation otherwise than by the honest performance of all the conditions upon which he had agreed to surrender it. He has placed himself in the hands of others who for their own profit have assumed the duty of his protection, and they can have no right to take his money and refuse the protection other than the right which grows out of the strict performance of their own undertaking and where, as here they seek after his death to appropriate to themselves the benefit of the insurance for
645 which he has stipulated because of his failure to pay an assessment against him, it is but just that they should show that there was such an assessment, and that it is a liability which he had bound himself by his contract to pay. The burden falls justly upon them to show a performance as strict and literal as the performance they seek to exact from him. This is not a favor which the law grants him, but simply the fair and equal treatment to which every one is entitled before the law, which abhors an injustice. The assessment is the ground of his liability, and until it is shown to have been made in accordance with the contract he cannot be deprived of the idemnity which the contract gives him. Hannum vs. Waddill, 135 Mo., 153; Settle vs. Insurance Association, 150 M. A. 520, 528; Wayland vs. Indemnity Co., 166 M. A. 221; Earney vs. Modern Woodmen, 79 M. A. 385; King vs. Hartford Life Insurance Co., 133 M. A. 612; Craig vs. Insurance Co. 136 M. A. 5; Baker vs. Insurance Co., 51 Mich. 243; Insurance

Co. vs. Comfort, 50 Miss. 662; 2 Cooley's Briefs on Insurance, p. 1871-2.)

3. The defendant does not contend that an assessment should be made for the payment of a death loss until a death has occurred. (Bacon on Benefit Societies and Life Insurance sec. 377.) But it says that this rule was modified by the decree of the Connecticut court in the Dresser case. It is therefore necessary to examine the policy in connection with that decree to ascertain the powers of appellant in this respect; and in doing so we must consider the various funds involved in the inquiry. The defendant Company seems to have had a checkered career. It was organized under an act of the Connecticut legislature in 1866, as the "Hartford Accident Insurance Company." The next year its name was changed to the "Hartford Life and Accident Insurance Company;" and the next year (1868) it was again changed to the Hartford Life and Annuity Insurance Company and authorized to "make con-
646 contracts, upon any and all conditions appertaining to or connected with life risks, annuities and reversionary interests of whatever kind and nature." It then became a full fledged Insurance Company. Its business kept pace with these changes, and in 1879 it reduced its capital stock and organized the Safety Fund Department in which these policies were issued, and continued to write that kind of insurance until 1899 when it ceased to issue such policies, but has continued to administer the funds created under their terms. The plan was the same as that expressed in the policy sued on. Each certificate holder contributed $10.00 per $1,000.00 of insurance to form the "Safety Fund," which was to be held and administered by a corporation formed by themselves called the "Security Company." When the fund reached $300,000.00 its income was to be distributed among the policy holders according to the amount of insurance held by each, by applying it in reduction of their future assessments. It was to be invested in United States bonds and when it reached the sum of $1,000,000.00 "in United States Bonds" no further accumulation was to be made, but all future payments by policy holders of the $10.00 per $1,000.00 required for that fund were to be divided among policy holders of five years standing and applied to reduce assessments the same as the interest. Although the fund reached the magnitude of $1,000,000.00 it never reached that amount in United States bonds but was invested in other securities, including railway and bank stocks, and irrigation bonds. At the time of the assessment here in question the principal of this fund amounted to $1,166,354.29. How much it had been depleted by losses up to that time does not appear. The income of it is, under the contract contained in the policies, paid into the mortuary funds semi-annually, and distributed in reduction of mortality assessments.

There is one more fund which is material in this controversy. It will be seen from the terms of this certificate that upon payment of a death loss "any mortality or other charge against the mem-
647 ber payment of which is not matured" is to be deducted. In other words if he died after the close of the assessment quarter

and before payment of the assessment was due the entire assessment was to be deducted. If before the end of the quarter, only the pro rata amount up to the time of his death was to be deducted from the amount of the indemnity paid. In this way each assessment was excessive to that extent, and the excess, amounting to "many thousands of dollars," together with the surplus resulting from the over estimate of probable lapses, all of which was applicable to the payment of mortality assessments, had, at the time of the Dresser judgment been kept in the mortuary fund for the payment of death losses in advance of the assessments, and this constituted the fund for the prompt payment of losses which the Connecticut Court had in view when it entered the judgment. It was a fund being continually replenished at the occurrence and payment of each death loss, and the same fund about which it said in its judgment: "The plaintiffs claim it was improper and wrongful to accumulate these margins and to carry this balance in said mortuary fund, and claimed that said balance of margins should be distributed amongst the outstanding certificate holders, but it held that it is proper and reasonable that the company should hold some such fund for the purpose of enabling it to pay losses promptly, but that it was not necessary for that purpose that the company should hold more than the amount of one average quarterly assessment for the previous year." It is plainly seen from an attentive reading of this judgment that the court did not have any idea of undertaking to make a new contract for these certificate holders or to change the old one. It had no more right to do this than did the legislature and asserted no such right but it found this fund present in the mortuary fund; it was a flexible one because replenished by each death loss, and considered it proper that it should be used for any lawful purpose connected with the fund from which it had been taken by a slight and perhaps necessary safety margin in the assessment for each loss; and it was proper, in the estimation of
648 the court that such part of it as should be reasonable and necessary, not to exceed the amount of the average assessment for the next preceding year, should be used for the prompt payment of losses and that the remainder should be used in reduction of the succeeding assessments.

In the light of these three funds, that is to say, (1) the fund proceeding directly from the regular quarterly assessments to pay the losses for which they are made, (2) the interest on the safety fund, and (3) the "margins" referred to in the Dresser judgment, we will examine the assessment for the last quarter of 1909 embodied in call 126.

The average amount of the quarterly assessments for the preceding year had been $300,000.00, to which amount the defendant was limited by the judgment in maintaining this emergency fund. The assessment was levied by its express terms to pay 119 death losses therein enumerated, amounting, in benefits, to $322,378.48. On December 31, 1909, the last day of the quarter for which it was levied, all these losses except 15, amounting to $41,000.00, had been paid out of the fund on hand and there remained $74,938.92. On

the same day there had been paid into the fund from the income account of the safety fund $19,447.39, making the amount left on hand $94,386.31. Deducting from this $41,000.00, the amount of the 15 unpaid losses, left $53,386.31. In other words the payment of all losses for which this was to be made left the last mentioned amount on hand in the fund, to be "replenished" by the $322,387.48. This left a permanent fund on hand to the amount of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut Court and which represents the amount of excess above that authorized by the contract as modified by the judgment.

When this appeared in its evidence the defendant attempted to explain by the statement that there were other death losses which had accrued up to and including that day, bringing the total amount unpaid up to $128,000.00 in round numbers. Were this true, and the proofs in the hands of the Company, they should have been
649 included in that assessment, but no claim is made that they belonged there. If the death had occurred before that date and no proof had been furnished the company, the fund would be "replenished" to that amount in the next assessment, so that they would have no influence whatever in determining the amount of Call "126," but could be promptly paid out of the surplus that call would leave on hand. It is intimated however that the $87,000.00 of these losses not included in call 126 had been included in previous assessments the payment upon which had been extended out of kindness to the certificate holders, and this suggestion is given color by the report of defendant filed in the insurance department of Missouri as of that day, in which the following item appears:

"Net premiums in course of collection safety fund department $185,000.00," and as this included both the Men's and Women's division of that fund it would probably account for the proportion of such pending collections in the Men's department. For this an assessment had already been made which should be added to the amount of call 126 as a means of replenishing the fund. Its inclusion in this transaction in any other form would be in plain violation of the terms of both the policy and judgment.

It follows that the appellant, instead of sustaining the burden of proving a valid assessment as a foundation for the forfeiture of this policy, has shown a grossly excessive one made without authority either in the contract or the judgment in the Dresser case, and in pursuance of a policy which runs like a solid thread through the record, of accumulating large funds at the expense of the policy holders, and withholding them as long as possible from distribution. When we consider that in addition to what it received out of the income of these funds, it was collecting at the time this assessment was made, and receiving as compensation for the conduct of this remnant of an abandoned business about eighty-five thousand dollars per year from the policy holders, we can see no excuse
650 for extortion. We do not think a forfeiture can stand on the foundation of this assessment.

3. The appellant in argument contends that the policy was prop-

erly forfeited for non-payment of ten cents, a balance which it claims to have been due on the following figures. It charged Mr. Barber one fourth of his annual dues under the policy for expenses—$1.50. The court in the Dresser decree had ordered that $40,046.36 illegally withheld from the policy holders on account of excessive fees exacted for the care of the safety fund should be returned to them. On this account $1.40 was credited as the share running to this policy, leaving ten cents due in addition to the assessment for mortuary purposes. The policy, in this respect, runs as follows: "In consideration of * * * Three Dollars per annum on each $1,000 of the Indemnity herein provided for, expense dues, to be paid as hereinafter conditioned." The policy is dated September 4, 1893. On the next page are the "conditions" which, with respect to this payment, are as follows: "The member agrees to pay to said Company, for expenses, dues of three dollars per annum on each $1,000 Indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; or by pro rata installments of the same, in advance, for periods of less than a year." We have searched this voluminous record carefully for any evidence of any other arrangement. This was by the terms of the policy due on October first of each year and we see nothing in the provision we have quoted which gave the appellant the right at its own election, and without the consent of the policy holders, to make it otherwise payable. The forfeiture cannot stand on this ten cents.

4. In all the mutations which the appellant has undergone at the hands of the legislature there are some things in its original charter which seem to have remained intact. One of them provides:
651 "All the affairs of said corporation shall be managed and controlled by a board of not less than seven directors (the number of said directors to be determined by the by-laws of said Company)" and the other vests the power to make by-laws in the stock holders. It is not contended by the appellant that this assessment was made by the directors or by any committee appointed by the directors, or in accordance with any rule prescribed by them, or that it ever passed under their observation as a board, or was ever spread upon the corporate records. Nor is it contended that there is any by-law prescribing the method of levying the assessment. The action of the Company in making assessments involved the use of the highest discretion. It claimed the right, in the performance of that act, to determine an amount to be kept on hand for the payment of all such losses as might occur immediately upon the receipt of the proof and independently of any assessment therefor. The levying of these assessments and the determination of the amount of this fund which was limited only by circumstances of which it was required to judge, subject only to the maximum prescribed in the Dresser judgment, were the highest and most important acts and involved the largest discretion of any which related to the class of insurance to which its activities were mainly directed during the twenty years preceding 1899. If the legislative direction that *all* its affairs were to be managed and controlled by their direction did not include this,

it would be different to say what it did include. It evidently means more than the appointment of the usual officers of such corporation. Under these circumstances we think the executive officers of the Company were without power to determine these things and to levy these assessments otherwise than under their direction to be shown by its records. (Bacon on Benefit Societies and Insurance sec. 377; Farmers' Milling Co. vs. Insurance Co., 127 Iowa, 314; Insurance Co. vs. Chase, 56 N. H. 341; Garretson vs. Equitable M. L. Ass'n, 93 Iowa. 402).

We have examined the cases referred to by appellant, and
652 note that the Fee case (110 Iowa, 271 is necessarily overruled by the Millard case, supra 127 Iowa, 314); and Miles vs. Life Ass'n, 108 Wis. 321 construed a charter so different from the one we are considering as to make it entirely inapplicable to this case. The same may be said of Insurance Co. vs. Brinbaum, 116 Pa. St. 565. There is nothing in either of these cases tending to disapprove the position we have taken.

5. The submission of the question of damages and attorneys' fees to the jury was proper under the rule stated by this court in Keller vs. Home Insurance Co., 198 Mo., 440, and Brown vs. Insurance Co., 45 Mo. 1. c. 227, where it is said that "the whole question of vexatious refusal or delay is a matter of fact to be determined by the jury. They must make up their verdict on this issue by a general survey of all the facts and circumstances in the case; and if, upon full consideration, they conclude that the refusal was unjustifiable and vexatious, the law authorizes them to assess the damages. The statute will not admit of the construction contended for by the counsel for the plaintiff in error, that before damages were allowed it must be explicitly proved by the plaintiff that the delay or refusal was vexatious."

We think that under this rule the evidence was ample to justify the submission of that question, and that the instruction of the court properly defined the duty of the jury. There having been no error in this and the appellant having failed to sustain the burden of showing, or presenting evidence tending to show the levy of a legal assessment in the matter of call 126 for the nonpayment of which it seeks to forfeit the policy sued on, the judgment of the circuit court is affirmed.

Railey, C., not sitting.

STEPHEN S. BROWN, *Commissioner.*

PER CURIAM:

The foregoing opinion of Brown, C., is adopted as the opinion of the court. All concur.

STATE OF MISSOURI, sct:

I, J. D. Allen, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the opinion of Division No. 1 of said Court, delivered in the foregoing entitled cause, on

the 30th day of March, 1916, as fully as the same appears on file in my office.

[Seal of the Supreme Court of Missouri.]

In Testimony Whereof, I have hereunto set my hand and affixed the seal of our said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 3rd day of August, 1916.

J. D. ALLEN, *Clerk.*
By —— ——, *D. C.*

653 In the Supreme Court of Missouri, Division No. One.

Thereafter, to-wit, on April 8th, 1916, the following further proceedings were had and entered of record in said cause:

"ROSA BARBER, Resp.,
vs.
HARTFORD LIFE INS. CO., App.

Comes now the said appellant, by attorney, and files its motion for a rehearing herein; and also files its motion to transfer this cause to the Court in Banc.

Thereafter, to-wit, on July 3rd, 1916, the following further proceedings were had and entered of record in said cause:

"ROSA BARBER, Resp.,
vs.
HARTFORD LIFE INS. CO., App.,

Now at this day, the Court having considered and fully understood the motions, heretofore filed herein by said appellant, for a rehearing herein and to transfer this cause to the Court in Banc, doth order that said motions be, and the same are hereby overruled."

Which said motions are in words and figures as follows:

654 In the Supreme Court of Missouri, Division No. 1, October Term, 1915.

No. 17664.

ROSA BARBER, Respondent,
vs.
HARTFORD LIFE INSURANCE COMPANY, Appellant.

Appellant's Motion for Rehearing.

Now comes the appellant and moves the Court to grant it a rehearing in the above-entitled cause because the opinion is in conflict with a controlling decision of the court en banc, to-wit, the decision in the case of Jones v. Williams, 139 Mo., page 1, to which the atten-

tion of the Court was not called, through neglect or inad-
655 vertence of counsel, and for the further reason that the Court has misconceived the facts in this record and, in its opinion, erroneously stated the facts in the particulars set forth in the following brief thereof:

JONES, HOCKER, SULLIVAN & ANGERT,
Attorneys for Appellant.

Brief of Facts Shown by Record.

First Misstatement of Facts.

At page 14 of the opinion the Court states (referring to the time when the assessment in question was levied):

"This left a permanent fund on hand to the amount of $375,764.79, or nearly $76,000 in excess of the amount authorized by the Connecticut Court."

This statement of fact is without any foundation in the record and involves two fundamental errors of fact.

(*a*) Reference to the opinion will show that in arriving at this amount the initial figure, $74,938.92, taken by the Court as being in the Mortuary Fund is correct. The Court then adds the sum of $19,447.39, which it treats as having been paid into the Mortuary Fund, whereas the record shows that this sum was never paid into the Mortuary Fund and could not lawfully be paid into said fund. This amount, $19,447.39, is, as the Court states in its opinion, the earnings of the Safety Fund, paid to the defendant on the 31st of December, 1909, but the sum so paid is applicable as divi-
656 dends in reduction of the future dues and assessments of the members, and not otherwise applicable (Res., pp. 157-160, 270). This sum is applicable to particular individual members, i. e., those who paid this assessment, only when the assessment was paid (Rec., pp. 202, 203, 235). It is so provided in the certificate of membership (Rec, p. 56) and in the trustee's contract (Rec., p. 56), and the evidence shows that this amount was apportioned by the defendant among the certificate holders as a dividend in reduction of Call 126, levied January 29, 1910 (Rec., pp. 160, 161). So that the court was entirely in error in assuming that this amount, $19,447.39, was in the Mortuary Fund at any time.

(*b*) The Court likewise assumed that at the date when this assessment was ordered, December 31, 1909, there was on hand in the Mortuary Fund the further sum of $322,387.48, but manifestly the Court overlooked the fact, clearly shown by the record and set forth in defendant's statement of facts (Appellant's Brief, p. 10) that this was the amount of the assessment only, calculated on December 31, 1909 (see Rec., pp. 117, 119); that this assessment was not levied, did not go out for thirty days, to-wit, January 29, 1910 (that time being necessary to prepare the notices, etc.) (see Rec., p. 119), and that the notices thereof were not mailed until January 29, 1910 (see Rec., p. 119; see also page 7 of the divisional opinion). How,

therefore, is it possible for the defendant to have on hand on December 31, 1909, as "a permanent fund on hand" this $322,387.48 when the call, the demand, for this sum did not go out until thirty days later, January 29, 1910? By referring to the notice (Rec., p. 125) and to the oral evidence introduced (Rec., pp. 117, 118), as
657 well as to the notice itself (set forth on page 7 of the divisional opinion, it will be seen that the said sum of $322,387.48 is the aggregate of Call 126 as levied against all the members (the call as against the insured in this case appearing in full on page 7 of the divisional opinion). This call was not due until March 1st, and under a universal rule applicable to all alike, could be paid as late as March 5, 1910, by those who lived east of Salt Lake and as late as March 15, 1910, by those who lived to the west of that line, and upon payment of penalty of fifty cents an additional extension of fifteen days was allowed to all members (this appears on page 8 of the divisional opinion). Thus we find that the amount of this assessment, $322,387.48, might be deferred by all of the members to a date ranging from March 5th to March 30th. How, therefore, can it be said that the defendant had on hand on December 31, 1909, as a permanent fund a sum which was not asked for until January 29th, was not due until March 5th and could be paid as late as March 5, 1910, by those who lived east of Salt March 20th to 30th, payment of which was entirely optional, which need not be paid at all, which was not paid at all (by many of the members) and which was not paid at all by the insured in this case?

The Court has adjudicated that money not on hand is on hand; that money which may never be paid has been paid; that there was presently on hand as a permanent fund money which was not payable and not demandable until ninety days.

To thus judicially adjudicate what plainly is not so does not make it so.

658 Second Misstatement of Facts.

At page 8 of the opinion, after reciting the fact that there were $128,166.67 of unpaid death losses, or $87,000 of death losses in addition to those included in the calculation of Call 126, the Court says that the defendant

"accounted for this fact by saying that the time of payment of losses included in the previous assessment had been extended so that the collection for the payment of these losses had not yet been made."

This quoted part of the opinion is wholly without any foundation in the record. No such contention was made by the defendant. We are at entire loss to know why any such assertion should be made in the opinion. This $87,000 of losses was not included in the assessment for various reasons (different reasons applying to each loss), as that the proofs were not completed, the notice had only been received on them, disputes between or uncertainty as to claimants, or for some lack of formality in the claim papers (Rec., p. 233). In the very nature of things, it would be impossible to include in the cal-

culation of the assesment all of the death losses accrued up to the very minute or the very day of calculation, not only for the various reasons heretofore recited, but also that losses were coming in at the rate of about $115,000 per month (Rec., p. 121), and the mere time required for examination would make it impossible to include every loss, examined and unexamined, at the time when any particular calculation was made. More than this, it should be borne in mind that the purpose of the power to levy assessments is for
659 the purpose of replenishing the Mortuary Fund. Defendant was not required in its calculation to include all losses incurred. This would but increase the amount of the assessment. It is not complained of that the assessment was not large enough. It was, both as to the insured and as to the defendant, immaterial whether or not all the death losses were included. The amount of the death losses was used merely as a basis for calculating the amount of money which the defendant company would need to pay its losses, having on hand, as it always had, a Mortuary Fund of fifty-odd thousand dollars, which varied from time to time up to as high as $300,000 (the permissible amount under the Dresser decree). Exactness of tabulation of all death losses was in no sense material, and whether the defendant included all losses incurred or only a part and the failure to include all can have no bearing on its right to levy this assessment for an amount within the limits prescribed by the Dresser decree.

Third Misstatement of Facts.

At page 14 of the opinion, after having argued and assumed (as we say, erroneously) that the defendant had on hand $375,764.79, the Court proceeds with the following statement:

"When this appeared in its evidence, the defendant attempted to explain by the statement that there were other death losses which had accrued up to and including that day, bringing the total amount unpaid up to $128,000.00 in round numbers. Were this true and the proofs in the hands of the company, they should have been included in that assessment, but no claim is made that they
660 belonged there. If the death had occurred before that date and no proof had been furnished to the company, the fund would be replenished to that amount in the next assessment, so that they would have no influence whatever in determining the amount of Call 126, but could be promptly paid out of the surplus that call would leave on hand. It is intimated, however, that $87,000.00 of these losses, not included in Call 126, had been included in previous assessments, the payment upon which had been extended out of kindness to the certificate holders, and this suggestion is given color by the report of the defendant," etc.

This quoted part of the opinion is almost wholly un... ...ible. The $128,000.00 of death losses referred to are listed in Exhibit "RR" (Rec., p. 273) and is a list of unpaid death losses as contradistinguished from the aggregate of the previously paid death losses (see the preceding question on page 272). Some of these death

losses listed in Exhibit "RR" were included in the calculation of Call 126. Others were not and, as explained, for want of necessary notice or for other reasons. It was not intimated or suggested anywhere in the record that $87,000.00 of these losses had been included in any previous assessments, or that this sum, $87,000.00, represented assessments payable by members, the time for payment of which had been extended, nor is there any warrant in the record for the suggestion that the item "net premiums in course of collection, Safety Fund Department, $185,000.00" represented assessments the time for payment of which had been extended. The explanation of this item of $185,000.00 is found on pages 23 to 26 of appellant's reply brief, and the deduction drawn by the Court in its opinion is without any foundation in the record.

661 Fourth Misstatement of Facts.

At page 12 of the opinion the Court says:

"The defendant doesn't contend that an assessment should be made for the payment of a death loss until a death has occurred (Bacon on Benefit Societies and Life Insurance Company, Section 377). But it says this rule was modified by the decree of the Connecticut Court in the Dresser case."

This statement of the rule and defendant's contention concerning it is wholly incomprehensible. The defendant has never contended that there was any modification of any rule (or any modification of anything) by the decree of the Connecticut Court in the Dresser case. The defendant is a trustee of a trust fund under the jurisdiction and control of the Connecticut courts. The Connecticut courts have directed the defendant, as trustee, how to administer that fund. Defendant has simply asserted, and now asserts, that it is bound and controlled by that decree and that this court is bound to give full faith and credit to that decree; that, as shown, the provision of the decree is that the defendant is entitled to keep on hand in its Mortuary Fund an amount not exceeding one quarterly assessment, or $300,000. It is shown that it had on hand in that fund when this assessment was levied the sum of $74,938.92 (Rec., p. 151); that the attempted addition thereto by this Court of $19,447.39 (the dividend fund, which in no event could ever go into the Mortuary Fund) and the further attempted addition of $322,387.48, which was
662 not on hand and could not come into the hands of the company until from sixty to ninety days later, is to deny full faith and credit to the decree by assuming as a fact what is not a fact; by assuming that the defendant had on hand money which clearly it did not have on hand; by assuming that money which was not collectible until March was on hand in the preceding December.

We submit that no bank or other institution could ever be declared insolvent for want of funds with which to pay its debts if it were permitted to treat as cash assets on hand notes and other bills receivable which were not payable for sixty or ninety days hence, which might never be paid. Yet this is the logic of the opinion rendered.

Fifth Misstatement of Facts.

At page 10 of the opinion the Court erroneously states that its jurisdiction rests solely upon the point that the trial court erred in rejecting the record of the judgment of the Superior Court of Connecticut for New Haven County in the case of Ibs and others (the Court is manifestly referring to the Dresser case, another error in the opinion, but, of coure, an immaterial error). But the material error is the statement that its jurisdiction rests on this point alone.

Assignment of errors Nos. 5 and 7 distinctly raise the constitutionality of the Damage Act of this State. The point is briefly that under the course of decisions in this State an insurance company is deprived of its property (to the extent of damages and attorney's fees allowed) without due process of law in that it is so deprived of its property by an alleged process of law which does not require
663 either pleading or proof of the fact of vexatious delay. It seems to us that the mere statement of this proposition indicates that the statute as construed by this Court is violative of the due process of law provision of the Federal Constitution. The question which is presented by this assignment of error has never been passed upon by this Court or by the Supreme Court of the United States. We do not say that the constitutionality of the act has not been passed upon, for it has, and many times, but we do say when this Court, by the course of its decisions, permits a recovery of money without either pleading or proof (and the decisions expressly say that no pleading or proof is necessary), it is not due process of law and is no process of law at all, and we further say that this question, *i. e.*, whether the course of decisions under this statute is a rule of judicial decision which violates the Federal guaranty of due process of law has never been decided by this Court or by the Federal Supreme Court.

The jurisdiction of this Court is also rested on assignment of errors No. 7 (which is not noticed in the opinion rendered), which asserts that the judgment rendered is violative of Sec. 1 of the XIV Amendment because the defendant is merely a trustee—it incurred no personal liability; it agreed to pay only out of the Mortuary Fund—and yet a general judgment imposing personal liability (not conditioned on the existence of or the sufficiency of the fund of which it is a mere trustee) is rendered against it.

664 Sixth Misstatement of Facts.

At page 14 of the opinion the Court says:

"The assessment was levied by its express terms to pay 119 death losses therein enumerated, amounting in benefits to $322,378.48."

This statement is exactly contrary to the terms of the contract and the opinion of the Supreme Court in the Ibs case, by the former of which it is expressly provided and by the latter it is judicially determined that these assessments are levied, not for the purpose of paying specific death losses, but to replenish the Mortuary Fund. If any contrary inference is deducible from the terms of the notice, it

need only be said that the contract purpose for which assessments are authorized cannot be changed, modified or limited by the form of the notice. The purpose for which the assessment is levied is determinable by the terms of the contract; the amount of the death losses incurred is a mere basis, one of the factors by which the amount which is to replenish the Mortuary Fund is determined. The language of the notice cannot add to or take from the contract power and duty to levy the assessment when necessary.

Seventh Misstatement of Facts.

At page 8 of the opinion the Court makes the following misstatement of facts (referring to credit of $1.40 allowed to Barber on Call 126) (Rec., p. 125), quoted in the opinion (page 7), to-wit:

"The credit of $1.40 is Barber's share of the excessive compensation taken by the Security Company for the care of the Safety Fund."

665 This $1.40 is not Barber's share, or any share, of the excessive compensation taken by the Security Company. It is Barber's share of the earnings of the fund for the six months preceding December 31, 1909 (Rec., pp. 160, 161). On December 31, 1909, the amount received by the defendant company from the Security Company as the earnings of this fund for the preceding six months, together with the sum already in that fund, amounted to $19,447.39 (Rec., p. 159) for distribution on the next assessment (Rec., p. 159). On this day the company actually apportioned and subsequently applied of this balance $19,020.70 in reduction of the dues and assessments in Call 126 (the difference or $426.69 being retained in the fund to cover dividends previously declared on certificates where the time for the payment of assessments or calls had been extended) (Rec., p. 159).

The excess compensation taken by the Security Company was adjudged to be returned by the Security Company to the income account of the safety fund for subsequent distribution by defendant by way of credit to the members on subsequent assessments (see decree, Dresser case, Rec., p. 46). This decree was entered on March 23, 1910 (Rec., pp. 22, 327), subsequent to the date on which Call 126 was calculated; subsequent to the date on which it was dated and mailed, and subsequent to the date on which it was payable by Barber, so that it was a physical impossibility for this $1.40 to be Barber's credit out of these excessive payments taken by the Security Company for its services rendered in the management of the Safety Fund. The Dresser decree was entered three months after

666 Call 126 was levied. The Dresser decree was not performed and satisfied until a very much later date.

To confuse the date of the decree and the date of the call—to treat as part of the returned excess compensation (which was never returned by or to defendant, for it had nothing to do with it)—the dividends regularly apportioned is simply to produce confusion worse confounded.

Eighth Misstatement of Facts.

At page 5 of the opinion the Court has fallen into the following entirely erroneous misconception of the provisions of the contract sued upon: The Court there says (referring to the Safety Fund):

"The earnings of this fund, after it should reach $300,000, and all contributions to it, after it should reach one million dollars in United States bonds, par value, were to be divided among certificate holders of five years' standing in proportion to the amount of their certificates, and if the aggregate amount of the certificates should fall below one thousand dollars, the principal of the fund should be similarly divided."

The Court in this statement of the effect of the contract and the use to which the earnings of the Safety Fund should be put, fails to observe that the earnings of the fund are apportionable to the certificate holders of five years' standing in proportion to the amount of their certificates, but only as a credit on account of or in reduction of their dues and assessments. The earnings from this fund did not go into any fund of the defendant, but these earnings, when paid over to defendant by the Security Company semi-an-
667 nually, were immediately apportioned and applied to the credit of individual members in reduction of the charge against him on the next succeeding assessment, the amount of each such credit being indicated on each assessment notice to each member. When the assessment was paid the amount of such credit was taken out of the dividend fund and this credit turned into the Mortuary Fund as part payment of the member's assessment. The payments of earnings as received from the Security Company were kept in a separate account known as the dividend account and the aggregate of the payments therefrom which were applied as dividends in reduction of assessments is shown in the dividend account, which is Exhibit "FF" on page 159 of the record.

Ninth Misstatement of Facts.

At page 16 of the opinion the Court says:

"The appellant in argument contends that the policy was pro, rly forfeited for the non-payment of ten cents a balance which it claims to have been due on the following figures: It charged Mr. Barber one-fourth of his annual dues under the policy for expenses, $1.50. The Court in the Dresser decree had ordered that $40,046.36, illegally withheld from the policy holders on account of excessive fees exacted for the care of the Safety Fund, should be returned to them. On this account $140 was credited as the share running to this policy, leaving ten cents due in addition to the assessment for mortuary purposes."

Every line of this quoted statement (with one exception) is erro-
neous. The appellant never contended that the policy was
668 properly forfeited for the nonpayment of ten cents. It did not claim that there was a balance due of ten cents, on any computation, much less the computation set forth in the opinion. It

did charge Mr. Barber with one-fourth of his annual dues under the policy for expenses, $1.50, because this is what he agreed to pay. He had the option to pay his dues quarterly in advance, and he always exercised this option by so paying his dues (Ex. "CC"; Rec., p. 149). The Connecticut Court had not at the time this assessment was levied made any decree in the Dresser case. This assessment was levied before the decree in the Dresser case was entered. The decree in the Dresser case when entered did not decree that the defendant had illegally withheld any sum from the policy holders. It did not order this defendant to return the sum of $40,000.00, or any other sum, to them; the defendant could not give this policy holder or any other policy holder credit at that time for an illegal charge made by somebody else, which somebody else was subsequently ordered to return, and defendant did not do so. The quoted clause of the opinion shows an entire misconception of facts, of dates and of the record, and to adjudge anything on any such misstatement of record facts is itself to deprive the defendant of its property without due process of law.

The defendant's contention with respect to forfeiture for non-payment of dues is without answer. The insured agreed to pay his dues in advance; he was privileged to pay these dues annually or in other periodical installments. He uniformly paid them in quarterly installments in advance. He did not pay the dues that were
669 payable on March 1st, and failing to pay these dues, as a matter of law, the policy lapsed because it says so—this is the contract (Rec., p. 56). There is not and never has been any suggested answer to the claim asserted, and now reasserted, that for the non-observance of the provision and condition of the contract with respect to dues the insurance was terminated.

Tenth Misstatement of Facts.

At page 12 of the opinion, after referring to the Safety Fund, the Court states:

"At the time of the assessment herein in question, the principal of this fund amounted to $1,166,354.29."

This statement is entirely contrary to the record and fails to take account of the proof which was positive, undisputed and demonstrated by physical evidence, to-wit that there were two funds, one the safety fund of women's division and the other the safety fund of the men's division, the two divisions being separate departments of the defendant company, and the figure set forth in the opinion is the aggregate of the two funds (see Rec., pp. 173, 174, 175-187, 282, 283, 292, 293). For details of the proper explanation of this figure, see pages 1 and 2 of appellant's reply brief.

Eleventh Misstatement of Facts.

At page 5 of the opinion the Court makes the following entirely incomprehensible statement of fact:

"In 1899 they ceased the issue of certificates in this department,

and thus practically put an end to the influx of ten-dollar
670 contributions which, the fund having reached its maximum of one million dollars, must be divided among the certificate holders."

Both the contributions to the Safety Fund and the earnings of that fund continued to be received, after 1899 the contributions to that fund varying from $17,619.97 in 1900 to $397.50 in 1909 (see Exhibit "EE", Rec., p. 156), and the earning from that fund varying from $46,000 in 1900 to as high as $60,000 in 1908, as shown by Exhibit "FF" (Rec., p. 158). This has necessarily resulted from the fact that members were privileged to make their ten-dollar contributions to the Safety Fund either in cash at the time of entry or in installments, no member being entitled to participate in the fund until after he had completed his contribution of ten dollars for five years.

Twelfth Misstatement of Facts.

At page 11 of the opinion the Court, in discussing the doctrine of forfeiture, indicates that the defendant seeks "to appropriate to itself the benefit of this insurance." It is a matter of no concern to the defendant personally whether it pays out this money to this insured or to some other insured. It is the mere trustee of this fund and asserts that the claimant here is not entitled to it because the insured did not perform his contract. If the defense is sustained, it doesn't profit the defendant a single dollar. The judgment is paid out of this fund and other beneficiaries are to that extent deprived of the benefit of it.

671 Thirteenth Misstatement of Facts.

The aspersions cast upon the defendant company by the following clause of the opinion, page 11, "The defendant seems to have had a checkered career" are entirely unwarranted except by the facts recited in the opinion that the defendant in a career of fifty years has several times changed its name. Elsewhere in the opinion (page 15) reference is made to the assumed fact that the defendant was "accumulating large funds at the expense of the policy holders and withholding them as long as possible from distribution," and after asserting that defendant received a portion of the income of these funds (which fund the Court does not mention), culminates with the charge that the defendant has been guilty of "extortion."

The defendant received as compensation for carrying this policy exactly $6.00 per year, being $3.00 per thousand of insurance, or less than $150.00. Neither has the defendant been guilty of withholding any money to which anybody was entitled. The Safety Fund is not in the control of the defendant, but is in the control of the Security Company as trustee. The Supreme Court of Connecticut has held that this fund is not distributable, so that the much-maligned Security Company has not withheld any fund to which anybody was lawfully entitled, but if it had the defendant is not chargeable with this dereliction.

The only other funds which the defendant had in its charge were the Mortuary Fund, the Dividend Fund and the proceeds of dues. The dues consisting of $3.00 per year, belong to defendant as its compensation for conducting the business; it was so decided in the Dresser case, and defendant should not be charged with
672 "extortion" for retaining what legally belongs to it, and this whether it amounted in aggregate to much or little.

The Dividend Fund was applied promptly as received and at the very earliest moment that it could be applied as a credit on the very next assessment after it was received in every instance (see Rec., p. 157, 158, 159). Certainly the defendant was not guilty of unduly withholding this fund.

The Mortuary Fund, being the proceeds of assessments, less the payments therefrom on account of death losses, did accumulate from time to time by reason of the margin between the death losses assessed for and the death losses actually paid, just as the contract provides, it shall accumulate and be maintained, so as to create a fund which could be used, and was used, for the prompt payment of death losses without waiting for the future assessments to be paid. There never was a time when it could legitimately have been contended that to so accumulate money in this fund was unauthorized by the contract, but if there ever was, that question has been put at rest both by the Supreme Court of Connecticut and the Supreme Court of the United States.

There is not one word of evidence in this case which justifies the statement in the opinion that the defendant appropriated one penny of the income from any of the funds referred to, and if the Court will examine this record it will find that the defendant has accounted for every penny which it received, either as assessments towards the Mortuary Fund as well as the income received by it from the Safety Fund.

We therefore submit that the charge of withholding funds,
673 the appropriation of the income from any funds and the charge of extortion are entirely unwarranted.

Charges of this kind, if without foundation in the evidence, should not be made by any court of justice, because if the charges are unwarranted, it is injustice so to do. It is an injustice, too, for which the law affords no remedy, for the courts and the judges thereof are very properly immune from accountability for injustice done (intentionally or unintentionally), and therefore the judges of courts, above all others, should be most careful in charging any one with injustice or with extortion or any other misbehavior. The very fact that they are not accountable for what they say should make them more cautious that what they say is accurate.

Fourteenth—Error of Law.

The fifth paragraph of the divisional opinion of the Court proceeds on the assumption that because the right to levy an assessment involved the exercise of some discretion, the assessment must be ordered by the Board of Directors. All of the cases to which

the Court refers as holding that the assessment must be ordered by a particular person or persons (as by the Board of Directors or a designated committee), are cases where the certificate (or the organic law of the association) expressly required that the assessment should be levied by such person or persons. There is no such provision in this contract. And this circumstance distinguishes this case from the cases cited. The power to levy the assessments was vested in the company as such. Whenever a discretion is to be exercised
674 by a corporation, it may, by general law, be exercised by any executive officer of the company selected by the company for this purpose. It is delegable power and the delegation may be shown by record or by acts in pais. No one would contend for a moment that a trust company, whose very business is to execute trusts, can only exercise the discretion which it is required to exercise daily as to many of these trusts by an order of the Board of Directors in each instance. This would require the Board to be in constant session. We all know, as a matter of common knowledge, that they don't do this and that the exercise of the very highest discretion is customarily vested in the executive officers of these and kindred corporations. The defendant here was but a trustee. The acts in question involved the exercise of no more discretion, indeed far less discretion, than is exercised daily by trust companies or by other corporations, as, for instance, in the matter of selection of attorneys and counsel, which of itself involves the exercise of a higher discretion than that which was involved in the levying of this assessment, and no one for a moment would contend that a corporation must, in order to legally employ an attorney, get an order of the Board of Directors.

The quoted provision of the charter that "All the affairs of said corporation shall be managed and controlled by the Board of Directors" is that general provision that is found in many charters (and if not found in the charter itself, is supplied by the general law) that the management and control of the company is generally and finally with the Board of Directors, whose powers may be and are continuously delegated to the general executive officers
675 or to special officers. What the powers of this company are, and by whom such powers shall be exercised, is a question determinable by the terms of the charter granted by the State of Connecticut, in the light of the law of Connecticut. This charter is of itself a public act, and as such it is entitled to the full faith and credit guaranteed by the Constitution of the United States; therefore, the question presented by this paragraph of the opinion, that is, whether the powers exercisable by the corporation must be exercised by the Board of Directors or maybe some delegated authority of the Board, is itself a question which involves the full faith and credit to be given to the public act of Connecticut and is a question that should be determined by the court en banc under the provision of the Constitution of Missouri.

Above and beyond this, the opinion as rendered runs directly counter to the opinion of the Supreme Court of this State in Jones v. Williams, 139 Mo. 1, where the Court, in holding that Sec. 2508,

R. S. Mo. 1889, which required the property and business of a corporation to be managed and controlled by directors, was not contravened by a contract made by the president of a company appointing another as editor and manager of a newspaper without the authorization of the Board of Directors and that formal action by the Board of Directors was not necessary to confer such authority upon the president, says:

"At common law the power to have a Board of Directors was inherent in the corporation. The statute of Missouri requiring the business and property of a corporation to be managed and controlled by directors is but an affirmance of the common law
676 power. So, likewise, the directors have the power, without statutory authority, to delegate to officers, agents or executive committees the power to transact, not only ordinary and routine business, but business requiring the highest degree of judgment and discretion. Thus authority to manage the business of railroad corporations, insurance companies, banking institutions and other corporations having large and complicated business interests is, usually, delegated by the directors to agents, often, but not necessarily, officers of the corporation. These agents or managing officers have incidental power to employ all assistants and to do all acts necessary to properly conduct the business over which they are given charge. Formal action of the Board of Directors is not necessary in order to confer the authority.

* * * * * * *

"Entrusting the president with the management of the entire business is not the delegation of corporate rights and powers, but is a mere authorization of the president to perform, for and in the name of the corporation, the business it is authorized to transact."

The Court apparently overlooked the fact that it had been the custom for many years previous to the date of the assessment in controversy for the secretary, together with one of the other officers, usually the president, to make and levy these assessments (see Rec., pp. 255-256, 263). This constituted a delegation to these officers by the Board of Directors of the power to make and levy these assessments. As said by this Court in the Jones case, supra, l. c. 27, after holding that an act done by the president is presumably binding on the company:

"However that may be, 'there can be no doubt', says
677 Morawetz, 'that the Board of Directors may invest the president with authority to act as chief executive officer of the company. This may be done either by an express resolution or by acquiescence in a course of dealing. * * * (Morawetz on Corp., Sec. 538)."

We respectfully submit that this case should be heard by the court en banc, as prayed in the motion to transfer to the court en banc filed simultaneously herewith.

Respectfully submitted,

JONES, HOCKER, SULLIVAN & ANGERT,
Attorneys for Appellant.

678 In the Supreme Court of Missouri, October Term, 1915.

No. 17664.

ROSA BARBER, (Plaintiff), Respondent,
vs.
HARTFORD LIFE INSURANCE CO. (Defendant), Appellant.

Appeal from the Circuit Court of Johnson County, Hon. A. A. Whitsitt, Judge.

Appellant's Motion to Transfer to Court in Banc.

Motion to Transfer to Court En Banc.

Now comes the defendant and moves the Court to transfer this cause to the Court en banc for the reason that the following federal questions are involved in this cause:

1st. The full faith and credit to be given to the decree of
679 the Superior Court for New Haven County in the case of Dresser et al. v. Hartford Life Insurance Company, as required by Article IV, Section 1, of the Constitution of the United States, which said federal constitutional question is considered and discussed by the divisional opinion on pages 9 and 10, and which constitutional question is fully presented in appellant's assignment of errors, No. 1.

2nd. The divisional opinion rendered herein has added a condition or qualification to the said decree in the case of Dresser et al. v. Hartford Life Insurance Company, by holding that the assessment levied is invalid because not levied by the board of directors; whereas, said Connecticut decree does not require that assessments shall be levied by the board of directors of the company; and it being no part of said decree that the assessment shall be levied by the board of directors, this Court has, by such additional requirement, denied to said decree, as rendered by the Connecticut Court, the full faith and credit to which said decree is entitled under Article IV, Section 1, of the Constitution of the United States.

3rd. The divisional opinion fails to give the full faith and credit required by Article IV, Section 1, of the Constitution of the United States to a public act and record of the State of Connecticut, to-wit, the public act and the record by which the defendant is incorporated, being the legislative charter granted by the Legislature of the State of Connecticut. By said act and record certain powers are vested in the defendant corporation, and the extent and character of these powers as set forth in the said Act of the Legislature and the record thereof, and the extent of said powers and the full faith and
680 credit that should be given thereto, as required by the Federal Constitution, are determinable by the Court en banc, under the provisions of Section 4 of the Amendment of 1890 to the Constitution of the State of Missouri.

4th. The judgment appealed from herein and the divisional opinion heretofore rendered deprive the defendant of its property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that the statute of Missouri (Section 7068, R. S. 1909) authorizing the imposition of damages and attorney's fees, and the course of construction thereof by the courts of this State (constituting a rule of judicial construction) authorizes and permits the taking of property by pretended process of law which is not actually process of law in that it permits the taking of private property without notice, pleading proof or an opportunity to be heard and have a judicial inquiry before the property is adjudged to be taken, and because the condition on which the law says the property may be taken, i. e., "vexatious delay," is not required to be either pleaded or proven, which said federal question is assigned as error under assignment of errors, No. 5, page 20 of appellant's brief, and which said federal constitutional question is discussed at page 9 of the divisional opinion rendered herein.

5th. The judgment rendered against the defendant by the court below, and affirmed by the divisional opinion rendered herein, deprives the defendant of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that
681 the judgment is against the defendant personally; whereas, the certificate sued on by the plaintiff herein expressly provides that the amount payable thereunder shall be paid out of the mortuary fund, of which the defendant in trustee, and not otherwise; and the defendant being a mere trustee of such mortuary fund, administering the same in accordance with the provisions of the certificate sued on and the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser et al. v. Hartford Life Insurance Company et al., there is no warrant in law for the rendition of a personal judgment against the defendant.

JONES, HOCKER,
SULLIVAN & ANGERT,
Attorneys for Appellant.

Suggestions in Support of Motion to Transfer to the Court En Banc.

1. The federal questions involved in this case requires that it be transferred to the court en banc on application of the losing party because of the terms of section 4 of the amendment of 1890 to our Constitution. The question as to the faith and credit to be allowed to the decree of the Connecticut court and of the effect thereof is, of course, under the provisions of Section 1 of Article IV of the Constitution of the United States, a federal question. The provisions of section 4 of the amendment of 1890 to Article VI of our own Constitution provides:

"When a federal question is involved the cause on the application of the losing party shall be transferred to the court for its decision."

This language means what it says and it neither says nor
682 means that the party moving for the transfer must have been denied a federal right. The provision for the transfer is operative regardless of the disposition made by the division of the federal question in the record. It results, therefore, that a litigant who is the losing party is entitled to have the cause transferred to the court en banc notwithstanding, perchance, the division of the court may have decided the federal question in his favor, but found against him on some other question in the case. This provision of our Constitution must be so read or else language and limitations must be added to it which are not found written therein by its framers.

2. The provisions of the Federal Constitution with respect to faith and credit to proceedings in sister states is not limited to judicial proceedings. The language of the Constitution on that subject is that full faith and credit shall be given to "public acts, records and judicial proceedings of every other state." This provision includes within its scope by the plainest of intendment legislative proceedings such as the enactments of the Connecticut Assembly incorporating the defendant company and which constitute its charter. The question, therefore, as to whether or not the executive officers of the defendant company are authorized and empowered under its charter to make an assessment against policy-holders is a question as to the faith and credit to be given to the enactment of the General Assembly of Connecticut, which, under the terms of Section 1 of Article VI of the Constitution of the United States, is a federal question, and by reason of the existence of this question in the record under the terms of our own Constitution, the losing party is entitled as a matter of right to the transfer of the cause to the entire court for its decision.

683 3. Section 4 of the amendment of 1890 to Article VI of our State Constitution, in addition to the provision above referred to, also provides:

"When a division in which a cause is pending shall so order, the cause shall be transferred to the court for its decision."

Here, of course, the right is not with the litigant, but with the division of the court in which the cause is pending. It is our insistence that, regardless of federal questions in the case which we think entitle us to the transfer to the full court as a matter of right, the court should order this cause transferred to the entire court for hearing and determination under this discretionary power and for the reason: There is now pending in the State numerous action by numerous other policy-holders of this same defendant, involving the validity of assessments made by the defendant under circumstances similar to those in the case at bar, and the decision of this cause must and will stand for a precedent for the determination of those; one of these causes (Johnson v. Hartford Life Ins. Co.), involving the substantial question here involved, has found its way into division No. 2 of the court (is numbered 17399) and is there and now pending and is set down for argument this month, April 24th.

In view of that situation it is our insistence that the Court, in the

exercise of its discretion and regardless of the federal questions involved in the cause, should order the same transferred to the court en banc for determination.

Respectfully submitted,

JONES, HOCKER,
SULLIVAN & ANGERT,
Attorneys for Respondent.

684 In the Supreme Court of Missouri.

And thereafter, to-wit, on August 7th, 1916, the following further proceedings were had and entered of record in said cause:

(No. 17664).

ROSA BARBER, Respondent (D. E.),
vs.
HARTFORD LIFE INSURANCE COMPANY, Appellant (P. E.).

Now at this day there are presented by the Hartford Life Insurance Company, appellant (plaintiff in error), to the Hon. Archelaus M. Woodson, Chief Justice of the Supreme Court of Missouri, in chambers, a petition for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, citation to the said respondent (defendant in error), citing and admonishing her to be and appear in the Supreme Court of the United States within thirty days from the date thereof, an assignment of errors, and a supersedeas bond in the sum of $6,000.00; which said writ of error is allowed, said citation signed and ordered issued, said assignment of errors filed, and said bond approved and ordered filed.

685 In the Supreme Court of Missouri.

No. 17664.

THE HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,
v.
ROSA BARBER, Defendant in Error.

Assignment of Errors.

Plaintiff in error, The Hartford Life Insurance Company, of Hartford, Connecticut, complains of Rosa Barber and says that there is manifest error in the record and proceedings in the above entitled cause and in the decision and judgment of the Supreme Court of the State of Missouri, in this, to-wit:

I.

The Supreme Court of Missouri failed and refused to give full faith and credit to a decree of the Superior Court of New Haven County, Connecticut, a court of record of the said State, in the case of Charles H. Dresser et al v. The Hartford Life Insurance Company et al (Curtis, J.), duly exemplified under and in accordance with the Act of Congress, in which case there was involved and decided a controlling fact material to the determination of this cause, contrary to and in violation of Article IV, Section 1,
686 of the Constitution of the United States.

II.

The Supreme Court of Missouri failed and refused to give full faith and credit to a decree of the Superior Court of New Haven County, Connecticut, a court of record of the said State, in the case of Charles H. Dresser et al v. The Hartford Life Insurance Company et al (Shumway, J.), duly exemplified under and in accordance with the Act of Congress, in which there was involved and decided a controlling fact material to the determination of this cause, contrary to and in violation of Article IV, Section 1, of the Constitution of the United States.

III.

The Supreme Court of Missouri erred in failing and refusing to give full faith and credit to a public act and record of the State of Connecticut, to-wit, the legislative charter granted by the Legislature of the State of Connecticut, contrary to and in violation of Article IV, Section 1, of the Constitution of the United States.

IV.

The said Supreme Court of Missouri erred in not holding that the failure of the insured to pay his quarterly dues worked a forfeiture of the policy, in accordance with the terms of the contract sued on.

V.

The said Supreme Court of Missouri erred in not holding that the failure of the insured to pay his quarterly assessment
687 worked a forfeiture of the policy in accordance with the terms of the contract sued on.

VI.

The said Supreme Court of Missouri erred in adding a condition or qualification to the decrees of Shumway, J., and Curtis, J., of the Superior Court of New Haven County, Connecticut, in the case of Dresser et al. v. The Hartford Life Insurance Company et al., and to the Charter of the plaintiff in error, by holding that the assessment could not be levied by officers of the plaintiff in error and that said assessment should have been levied by the board of

directors, whereas neither said Connecticut decrees in the case of Dresser et al. v. The Hartford Life Insurance Company et al., as aforesaid, nor the charter of the plaintiff in error, require that assessments should be levied by the board of directors of the plaintiff in error, and it being no part of said decrees or of the charter of the plaintiff in error that the assessments should be levied by the board of directors, the Supreme Court of Missouri has by such added requirement denied to said decrees and to the charter of the plaintiff in error the full faith and credit to which they are entitled under Article IV, Section 1, of the Constitution of the United States.

VII.

The Supreme Court of Missouri erred in holding that the officers of the plaintiff in error could not levy the assessment but that the same should have been levied by the directors of the plaintiff in error for the following reasons:

First. Because the charter of the plaintiff in error does not
688 require or specify that the directors of the plaintiff in error should make and levy the assessments;

Second. Because the evidence shows that the directors of the plaintiff in error had delegated to the officers the power and authority to levy the assessments.

VIII.

The judgment of the Supreme Court of Missouri deprives the plaintiff in error of its property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that the statute of the State of Missouri (Section 7068 of the Revised Statutes of Missouri for 1909) and the course of judicial construction thereof by the courts of Missouri, authorizing the imposition of damages and attorneys' fees, permits and authorizes the taking of property by pretended process of law which is not actual process of law in that it permits the taking of private property without notice, plea, proof or an opportunity to be heard and to have a judicial inquiry before the property is adjudged to be taken, and because the condition on which the statute says the property may be taken, i. e., "vexatious delay", is not required to be pleaded or proven.

IX.

The Supreme Court of Missouri erred in holding that at the time the assessment was levied the plaintiff in error had a "permanent fund on hand to the amount of $375,764.79 or nearly $76,000.00 in excess of the amount authorized by the Connecticut court." This statement is without foundation in the record and is against the undisputed evidence in the case, and because of such

holding the plaintiff in error was denied the right to have
689 full faith, credit and effect given to the judgment of the Superior Court of New Haven County, Connecticut, in the said Dresser case.

X.

The Supreme Court of Missouri erred in holding that "the assessment was levied by its express terms to pay one hundred and nineteen death losses therein enumerated, amounting to $332,378.48." This statement is contrary to the provisions of the contract that the assessments under this certificate are levied to replenish the Mortuary Fund (not to pay death losses), it is contrary to and fails to give full faith and credit to the decrees of the Superior Court of New Haven County in the Dresser case, and it is contrary to the holding and opinion of the Supreme Court in the case of The Hartford Life Insurance Co. v. Ibbs, 237 U. S. 662.

XI.

The Supreme Court of Missouri erred in holding that the credit of $1.40 allowed on assessment or Call No. 126 "is Barber's share of the excessive compensation taken by the security company for the care of the Safety Fund." This statement is without foundation in the record and is against the undisputed evidence in the case.

XII.

The Supreme Court of Missouri erred in its holding with reference to the Safety Fund that "at the time herein of the assessment in question the principal of this fund amounted to $1,166,354.29." This statement is without foundation in the record and is
690 against the undisputed evidence in the case.

XIII.

The Supreme Court of Missouri erred in holding that Section 7068, Revised Statutes of Missouri for 1909, as construed by the courts of Missouri, is constitutional, and in refusing to hold that said statute as construed by the courts of Missouri deprives the defendant of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XIV.

The Supreme Court of Missouri erred in affirming the judgment of the court below, which included an allowance to plaintiff by way of damages and attorneys' fees, because Section 7068, Revised Sta-tes of Missouri for 1909, which authorizes the imposition by the court of jury of such damages and attorneys' fees against an insurance

company for its vexatious refusal to pay the amount of said policy, as construed by the courts of Missouri, and in its application to the facts in this case deprives the defendant of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that there is no evidence in this case that the refusal of the plaintiff in error to pay to the defendant in error the amount of the certificate in suit was vexatious.

For which errors the plaintiff in error prays that the judgment of the Supreme Court of the State of Missouri, dated March
691 30, 1916, be reversed, and that the cause be remanded, with such directions as according to law and justice shall seem proper to this Court.

FREDK. W. LEHMANN,
JAMES C. JONES,
Attorneys for The Hartford Life Insurance, Company, Plaintiff in Error.

[Endorsed:] No. 17,664. In the Supreme Court of Missouri. The Hartford Life Insurance Company, Plaintiff in Error, v. Rosa Barber, Defendant in Error. Assignment of Errors. Filed Aug. 7 1916. J. D. Allen, Clerk. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

692 In the Supreme Court of Missouri.

No. 17664.

THE HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,
v.
ROSA BARBER, Defendant in Error.

Petition for Allowance of Writ of Error.

Now comes your petitioner, The Hartford Life Insurance Company, of Hartford, Connecticut, by its attorneys, F. W. Lehmann and James C. Jones, and respectfully shows that on the 30th day of March, 1916, the Supreme Court of the State of Missouri, being the highest court of the State of Missouri in which a decision of the suit could be had, rendered a judgment against your petitioner for the sum of Two Thousand Nine Hundred and Seventy-six Dollars ($2,976.00), and in which a petition for a rehearing was denied on July 3, 1916, as will appear by a reference to the record and proceedings in said cause.

Your petitioner respectfully claims the right to remove said record and judgment to the Supreme Court of the United States by writ of error under the statutes of the United States authorizing writs of error to state courts and, particularly, under Section 709 of the Revised Statutes of the United States, because in the record
693 and proceedings had in said cause and in the rendition of said judgment manifest error hath happened, to the great injury and damage of your petitioner, in that

1. The said Supreme Court of Missouri failed and refused to give full faith and credit as required by Article IV, Section 1, of the Constitution of the United States to the judgment and decree of the Superior Court of New Haven County, Connecticut, a court of record of the said State, in the case of Charles H. Dresser, et al. v. Hartford Life Insurance Company, et al. (Curtis, J.), duly exemplified under and in accordance with the acts of Congress, in which said case of Dresser, et al. v. Hartford Life Insurance Company, et al., there was involved and decided a controlling fact material to the determination of said case of Rosa Barber against your petitioner, and to which action said Rosa Barber was a party and privy at law, by which said judgment and decree she, the said Rosa Barber, was bound.

2. The said Supreme Court failed and refused to give full faith and credit as required by Article IV, Section 1, of the Constitution of the United States to the judgment and decree of the Superior Court of New Haven County, Connecticut, a court of record of said State, in the case of Charles H. Dresser, et al. v. Hartford Life Insurance Company, et al. (Shumway, J.), duly exemplified under and in accordance with the acts of Congress, in which said case of Dresser, et al. v. Hartford Life Insurance Company, et al., there was involved and decided a controlling fact material to the determination of said case of Rosa Barber against your petitioner, and to which action said Rosa Barber was a party and privy at law, by
694 which said judgment and decree she, the said Rosa Barber, was bound.

3. The Supreme Court of Missouri failed and refused to give full faith and credit to the public act and record of the State of Connecticut, to-wit, the legislative charter granted by the State of Connecticut to your petitioner, contrary to and in violation of Article IV, Section 1, of the Constitution of the United States.

4. The judgment of the Supreme Court of the State of Missouri deprived your petitioner of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, for the reason that the statutes of the State of Missouri (Section 7068, R. S. Mo. 1909) and the course of judicial construction thereof by the courts of Missouri, authorizing the imposition of damages and attorneys' fees, permits and authorizes the taking of property by pretended process of law, which is not actual process of law, in that it permits the taking of private property without notice, plea, proof or opportunity to be heard and to have a judicial enquiry before the property is adjudged to be taken, and because the conditions on which the statute says the property shall be taken, i. e., "vexatious delay," are not required to be pleaded or proved.

5. Your petitioner further respectfully shows to the Court that the said cause of Rosa Barber against your petitioner was an action brought by her as beneficiary named in a certain policy of insurance or certificate of membership which had been issued by your petitioner on the life of Frank Barber, the husband of the plaintiff, who died prior to the institution of said action by the plaintiff, to
695 recover the sum of Two Thousand Dollars ($2,000.00), the amount of which your petitioner promised, by the terms of

said certificate, to pay to said plaintiff as beneficiary out of the Mortuary Fund of the Safety Fund Department of said Company, and not otherwise, upon the death of her husband, the insured, provided the insured had paid all the assessments levied against him under said certificate of membership up to the time of his death, and provided that all the other terms and conditions of said policy had been duly complied with on his part.

Your petitioner further respectfully shows to the Court that in its answer to the petition of Rosa Barber your petitioner, after alleging the failure of the insured to pay a certain assessment levied against him prior to his death, further alleged as follows:

"Defendant further alleges that the contract or certificate sued on is one of many similar certificates issued by the defendant to numerous other members of the safety fund department, men's division, of the defendant company; that each of said certificates provides, as does the certificate sued on, for the levy and collection of assessments, the proceeds of which are to constitute the mortuary fund referred to in the certificate sued on, from which, upon the death of the holder of any such certificate, the indemnity provided for herein is to be paid; that the indemnity provided for in each of said certificates is payable only out of said mortuary fund and defendant is not otherwise liable for the indemnity provided for by said certificate; that under and by the terms of such certificate defendant is the trustee of said mortuary fund; that said certificates create an express trust as to such fund; members holding said certificates so long as they are in force and the members continuing alive (and after the death of the member while the certificates are in force the beneficiaries designated therein) are the cestuis que trust of said mortuary fund; that said mortuary fund has always been maintained in the State of Connecticut; that said fund and the said trust under which it is held is subject to the control and direction of the courts of general jurisdiction of the State of Connecticut; that said fund and the said trust under which it is held is subject to the control and direction of the courts of general jurisdiction of the State of Connecticut, and
696 particularly of the Superior Court of New Haven County, and the Supreme Court of Errors of the State of Connecticut; that the manner in which said mortuary fund and the trust under which it is held shall be administered has been the subject of adjudication by the courts of general jurisdiction of the State of Connecticut, to-wit, by said Superior Court of New Haven County and the Supreme Court of Errors of the State of Connecticut in the case of Charles A. Dresser et al. v. Hartford Life Insurance Company, which said courts have jurisdiction over this defendant and over said fund, and in which case said courts adjudicated and directed how the said mortuary fund should be administered; that said action was brought by one Charles H. Dresser, a member of said safety fund department, and holding a certificate of membership similar to that sued on by the plaintiff in this case, which said action was brought by said Charles H. Dresser on his own behalf, as well as on behalf of others similarly situated, including this plaintiff, to which action this plaintiff was thereby made a party and whose rights were therein fully

adjudicated, and the decisions in which case are res adjudicata as to this plaintiff's rights in said safety fund and mortuary fund; that a copy of the decrees and judgments of said Superior Court of New Haven County are hereto attached, marked, respectively, Exhibits "B" and "C," and the opinion of said Supreme Court of Errors of the State of Connecticut referred to in said decrees will be found reported in 80 Conn. 681, to which reference is hereby made; that said mortuary fund and the trust thereby created is being administered by the defendant strictly in accordance with the directions and adjudications of said courts of Connecticut as shown by said decrees and opinions; that under the terms of said certificates and under the terms of said trust as construed and adjudicated by said courts defendant is without authority to pay out of said mortuary fund the amount of any certificate of membership where, as in the case of Frank Barber, the member has failed *to* refused to pay the assessment levied against him to maintain said fund."

Your petitioner further respectfully shows to the Court that the case referred to in the foregoing paragraphs, Dresser, et al. v. Hartford Life Insurance Company, et al., was an action instituted in the Superior Court of New Haven County, Connecticut, by Charles H. Dresser et al., for the benefit of themselves as certificate-holders in the Safety Fund Department of your petitioner and of all other certificate-holders in the said Department similarly situated, and in which it was alleged that the certificate-holders were so numer-
697 ous that it was impracticable to make them all parties, in which cause your petitioner, The Hartford Life Insurance Company, and others were defendants.

Your petitioner further respectfully shows to the court that the certificate of membership sued upon by the said Rosa Barber in this case, as do all the other membership certificates issued by your petitioner, provides for the establishment and maintenance by your petitioner of a Mortuary Fund, from which the death losses incurred by your petitioner are to be paid. It is also provided by the terms of said certificates that this Mortuary Fund shall be replenished at stated periods by means of assessments levied from time to time upon the holders of said certificates in force at the time the particular assessments are levied; that this Mortuary Fund has at all times been maintained and administered in the State of Connecticut, and that it was adjudged and decreed by the Superior Court of New Haven County, Connecticut, in the said case of Dresser, et al. v. Hartford Life Insurance Company, et al., how and in what manner this particular fund should be administered and maintained by your petitioner.

Your petitioner further respectfully shows to the Court that it was expressly adjudged and decreed by the Superior Court of New Haven County, Connecticut, in said case, that it was proper and reasonable that The Hartford Life Insurance Company should maintain and carry in the Mortuary Fund for the purpose of paying death losses promptly an amount not more than the amount of one average quarterly assessment for the previous year, and that any excess in said fund above such amount should be distributed to the certificate-

holders in diminution of assessments by crediting and apply-
698 ing such excess on account of the next succeeding assessment.

Your petitioner further shows to the Court that the average quarterly assessment for the year preceding the assessment which the insured under his certificate failed to pay was Three Hundred Thousand Dollars.

Your petitioner further shows to the Court that the trial court refused to admit in evidence the decrees of the Superior Court of New Haven County, Connecticut, in said cause of Dresser, et al. v. Hartford Life Insurance Company, et al., as aforesaid, and that your petitioner, in its appeal to the Supreme Court of the State of Missouri from the judgment rendered against it in the trial court, duly assigned, among others, the following errors to the action of the trial court, to-wit:

"I.

"The Court erred in refusing to admit in evidence the judgment roll of the Superior Court of New Haven County, in the case of Dresser, et al. v. Hartford Life Insurance Company, et al. (Rec., pp. 303-306), duly exemplified in accordance with the Act of Congress made and provided (Rec., p. 327), and particularly the decrees of the Superior Court of New Haven County (Sumway, J., and Curtis, J.), in the case of Dresser, et al. v. Hartford Life Insurance Company, et al. Rec., pp. 22-49), in which there was involved and decided a controlling fact material to the determination of this cause, to which ruling the defendant then and there excepted, and by which ruling the Court failed to give full faith and credit to such decrees and judgment, as is required by Article IV, Section 1 of the Constitution of the United States."

"V.

"The Court erred in giving to the jury instruction No. 2 (Rec., p. 307) requested by the plaintiff, for the reason that the statute of Missouri, Section 7068, R. S. Mo. 1909, authorizing the imposition of damages and attorneys' fees, is unconstitutional and void because in violation of Section 10, Article I, of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in violation of Section 30 of Article II and Section 10 of Article II of the Constitution of
699 Missouri, and because the construction thereof by the courts of this State constitute a rule of judicial construction violative of said provisions of said state and federal constitutions and because the application of said statute to the facts of this case denies the defendant due process of law as guaranteed to it by the federal and state constitutions."

Your petitioner further shows to the Court that the rights claimed by your petitioner were denied by the Supreme Court of the State of Missouri in its opinion, a certified copy of which is attached hereto, said court holding and determining with respect to the Mortuary Fund as follows:

"This left a permanent fund on hand to the amount of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut court and which represents the amount of excess above that authorized by the contract as modified by the judgment." (Page 14 of the opinion of the Supreme Court of Missouri.)

And with respect to the Safety Fund, as follows:

"At the time of the assessment here in question the principal of this fund amounted to $1,166,354.29." (Page 12 of the opinion of the Supreme Court of Missouri.)

Your petitioner further shows to the Court that there was no evidence whatever to support the said findings or determination of facts by the Supreme Court of Missouri; that the evidence in the case shows conclusively, and is without conflict or contradiction to the effect that there was not in said Mortuary Fund more than Seventy-four Thousand Nine Hundred and Thirty-eight Dollars and Ninety-two Cents ($74,938.92) when the assessment was levied, for failure to pay which the certificate of membership of the said Frank Barber was forfeited, and that there was then outstanding and unassessed for death losses other than those enumerated in said assessment, amounting to Two Hundred and Sixty-one Thousand One Hundred
700 and Twenty-one Dollars and Fifty-two Cents ($261,121.52), and that the amount in the Safety Fund at the time the assessment was levied did not exceed One Million Dollars ($1,000,000.00), and thus the right of your petitioner to have full faith and credit and effect given to the judgment of the Superior Court of New Haven County in the said Dresser case was denied as the result of the findings of determinations of fact which were entirely without support in the evidence and were against the undisputed evidence in the case.

Your petitioner further shows to the Court that by reason of the aforesaid matters and things a right, privilege and immunity was claimed by your petitioner under the Constitution of the United States and was set up and brought into question and the decision was against the right, title and privilege so set up by your petitioner.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled cause, your petitioner prays a writ of error from said decision and judgment to the Supreme Court of the United States, and an order fixing the amount of a supersedeas bond, and your petitioner will ever pray.

FRED'K W. LEHMANN,
JAMES C. JONES,
Attorneys for Petitioner.

STATE OF MISSOURI,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by The Hartford Life Insurance Company in the sum of Six Thousand Dollars ($6,000.00); such bond when approved to act as a supersedeas.

A. M. WOODSON,
Chief Justice, Supreme Court of Missouri.

Aug. 7, 1916.

[Endorsed:] No. 17,664. In the Supreme Court of Missouri. The Hartford Life Insurance Company, Plaintiff in Error, v. Rosa Barber, Defendant in Error. Petition for Allowance of Writ of Error. Filed Aug. 7, 1916. J. D. Allen, Clerk. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

701 In the Supreme Court of Missouri.

No. 17664.

THE HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error.
v.
ROSA BARBER,, Defendant in Error.

Bond.

Know all men by these presents, that we, The Hartford Life Insurance Company, as principal, and Southern Surety Company, an Oklahoma Corporation, with General offices in St. Louis, as surety, are held and firmly bound unto Rosa Barber, in the sum of Six Thousand Dollars ($6,000.00) to be paid to the said Rosa Barber, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of August, 1916.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Missouri.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

702 THE HARTFORD LIFE INSURANCE COMPANY,
(Signed) By JOHN G. HOYT, *Pres.*

Bond approved and to operate as a supersedeas.
Dated August 7th, 1916.

SOUTHERN SURETY COMPANY,
(Signed) By E. J. DARN, *Secretary.*

A. M. WOODSON,
Chief Justice, Supreme Court of State of Missouri.

703 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or

some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Rosa Barber and the Hartford Life Insurance Company, a corporation, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to
704 the great damage of the said Hartford Life Insurance Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 7 day of August, in the year of our Lord one thousand nine hundred and sixteen.

JOHN B. WARNER,
Clerk, District Court United States, for Western Judicial District of Missouri, Central Division.
By H. C. GEISBERG, *Deputy.*

Allowed August 7th, 1916.

[Seal of the United States District Court of Missouri, Central Division, Western District.]

A. M. WOODSON,
Chief Justice, Supreme Court of Missouri.

[Endorsed:] No. 17,664. Hartford Life Insurance Company, Plaintiff in Error, vs. Rosa Barber, Defendant in Error. Writ of Error. Filed Aug. 7, 1916. J. D. Allen, Clerk. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

704a No. —.

Certificate of Lodgment.

SUPREME COURT,
State of Missouri, ss:

I, J. D. Allen, Clerk of the said Court, do hereby certify that there was lodged with me as such Clerk on the 7th day of August, 1916, in the matter of Rosa Barber, Defendant in Error, vs. Hartford Life Insurance Company, Plaintiff in Error.

1. The writ of error as herein set forth, and a copy thereof, for the Defendant in Error, Rosa Barber, the original of which is herein set forth.

2. The original bond a copy of which is herein set forth.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Jefferson, State aforesaid, this 14th day of August, 1916.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
Clerk of the Supreme Court of Missouri.

705 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Rosa Barber, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Missouri, wherein the Hartford Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Missouri, this 7th day of August, 1916.

A. M. WOODSON,
Chief Justice, Supreme Court of Missouri.

Attest:

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
Clerk, Supreme Court of Missouri.

Service of the foregoing citation is hereby admitted this 9th day of August, 1916.

NICH. M. BRADLEY,
ROBERT KELLEY,
CHAS. MORROW,
Attorneys for Rosa Barber, Defendant in Error.

[Endorsed:] No. 17,664. Hartford Life Insurance Company, Plaintiff in Error, vs. Rosa Barber, Defendant in Error. Citation. Filed Aug. 10, 1916. J. D. Allen, Clerk. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

706 In the Supreme Court of Missouri.

ROSA BARBER, Respondent (Defendant in Error),
vs.
HARTFORD LIFE INSURANCE COMPANY, Appellant (Plaintiff in Error).

STATE OF MISSOURI, *sct:*

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri certify that the foregoing is a full, true and complete transcript of all records and proceedings, in the above entitled cause, as called for by the præcipe filed herein, and made a part hereof, as fully as the same appear of record or on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court at my office in the City of Jefferson, State aforesaid, this 14th day of August, 1916.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
Clerk of the Supreme Court of the State of Missouri.

707 *Return to Writ.*

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record, and proceedings in the within entitled cause, together with all things concerning the same.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Supreme Court of Missouri, this 14th day of August, 1916.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
Clerk of the Supreme Court of Missouri.

708 In the Supreme Court of the United States, October Term, 1916.

No. 633.

HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.
ROSA BARBER, Defendant in Error.

Statement of Points Relied upon by Plaintiff in Error and of Parts of Record Necessary for the Consideration Thereof.

To the Clerk of the Supreme Court of the United States:

Please take notice that the plaintiff in error in the above entitled cause expects to rely for a reversal upon each of the assignments of error made by it herein and upon the following points:

I.

That the Supreme Court of Missouri, contrary to and in violation of Article IV, Section 1, of the Constitution of the United States, failed and refused to give full faith and credit to the judgments and decrees (Curtis, J., and Shumway, J.) of the Superior Court of New Haven County, Connecticut, in the case of Charles H. Dresser, et al., vs. Hartford Life Insurance Company, et al., in which case there was involved and decided a controlling
709 fact material to the determination of this cause, and to the charter granted by the Legislature of the State of Connecticut to the plaintiff in error.

II.

That the holdings and findings of the Supreme Court of Missouri at the time the assessment in controversy was levied that the defendant had "a permanent fund on hand to the amount of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut court," that the "assessment was levied by its express terms to pay one hundred and nineteen death losses therein enumerated amounting to $332,378.48," that the credit of $1.40 allowed on this assessment "is Barber's share of the excessive compensation taken by the Security Company for the care of the Safety Fund," and, with reference to the Safety Fund, that "at the time herein of the assessment in question the principal of this fund amounted to $1,166,354.29" (on the basis of which holdings and findings the Supreme Court of Missouri declared the assessment to be illegal and void), are without support or foundation in the record in this cause and are against the undisputed evidence in this case, and such holdings and findings by the Supreme Court of Missouri deny to the judgments and decrees of the Superior Court

of New Haven County, Connecticut, the full faith and credit to which they are entitled under Article IV, Section 1 of the Constitution of the United States.

III.

That the Supreme Court of Missouri erred in adding the
710 condition or qualification to the judgments and decrees of the Superior Court of New Haven County, Connecticut, in the case of Charles H. Dresser, et al., vs. Hartford Life Insurance Company, et al., and to the charter of the plaintiff in error, by holding that the assessment could not be levied by the officers of the plaintiff in error and that said assessment should have been levied by the Board of Directors, first, because neither the decrees of the Superior Court of New Haven County in the said case of Dresser, et al., vs. Hartford Life Insurance Company, et al., nor the charter of the plaintiff in error, provide or require that assessments shall be levied by the Board of Directors of the plaintiff in error, and by such added requirements to said decrees and to the charter of the plaintiff in error the Supreme Court of Missouri has denied to them the full faith and credit to which they are entitled under Article IV, Section 1, of the Constitution of the United States; and, second, because the undisputed and uncontradicted evidence in this cause shows that the Board of Directors of the plaintiff in error had delegated to the officers of the plaintiff in error the power and authority to levy these assessments.

IV.

Section 7068 of the Revised Statutes of Missouri for 1909, authorizing the imposition by the court or jury of damages and attorneys' fees against an insurance company for its vexatious refusal to pay the amount of the policy, as construed by the courts of Missouri, and in its application to the facts in this case, deprives the plaintiff in error of its property without due process of law, contrary to and in violation of Section 1 of the Four-
711 teenth Amendment to the Constitution of the United States, for the reason that there is no evidence in this case that the refusal of the plaintiff in error to pay the defendant in error the amount of the certificate in suit was vexatious, and the Supreme Court of Missouri erred in affirming the judgment of the trial court, which included damages and attorneys' fees assessed against it by the jury, amounting to the sum of $700.00.

V.

That the certificate of membership sued on by the defendant in error was properly forfeited in accordance with the terms of the contract for the non-payment by the insured of the dues specified in said certificate.

For the proper consideration of the foregoing points, plaintiff

in error deems the entire record necessary for the consideration thereof, except the following portions, which the Clerk will omit:

1. Index to record in Supreme Court of Missouri (Transcript, pp. 333 to 335 inclusive).

2. Appendix to record in Supreme Court of Missouri (Transcript, pp. 331-332 inclusive).

3. All of appellant's additional abstract of record (Transcript, pp. 336 to 627 inclusive) for the reason that the material portions of said additional abstract of record, to-wit, the decrees (Shumway, J., and Curtis, J.) of the Superior Court of New Haven County, Connecticut, are set forth as Exhibits "B" and "C" to defendant's amended answer.

712 4. All of respondent's additional abstract of record (Transcript, pp. 628 to 630 inclusive.)

F. W. LEHMANN,
JAMES C. JONES,
Attorneys for Plaintiff in Error.

Service of the foregoing is hereby acknowledged this 12th day of September, 1916.

NICH. M. BRADLEY,
ROBERT KELLEY,
CHAS. MORROW,
Attorneys for Defendant in Error.

713 [Endorsed:] 633—16/25463. No. 633. October Term, 1916. In the Supreme Court of the United States. Hartford Life Insurance Company, Plaintiff in Error, vs. Rosa Barber, Defendant in Error. Statement of points relied upon by plaintiff in error and of parts of record necessary for the consideration thereof. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

714 [Endorsed:] File No. 25,463. Supreme Court U. S., October term, 1916. Term No. 633. Hartford Life Insurance Co., Pl'ff in Error, vs. Rosa Barber. Statement of points to be relied upon and designation by plaintiff in error of parts of record to be printed, with proof of service of same. Filed Sept. 14, 1916.

715 In the Supreme Court of the United States, October Term, 1916.

No. 633.

HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,
v.
ROSA BARBER, Defendant in Error.

Amendment of Parts of Record Necessary for Consideration of Points Relied upon by Plaintiff in Error.

For the reason that counsel for defendant in error insist that the additional abstract of the record filed by defendant in error (respondent below) in the Supreme Court of Missouri, and found on pages 628 to 630 of the transcript of the record filed in this Court, is material to the issues of this case, which said additional abstract of the record of the defendant in error as aforesaid consists of certain items and figures taken from the annual report made by the plaintiff in error to the Insurance Department of the State of Missouri, the plaintiff in error therefor directs the Clerk of this Court to include as a part of the record necessary for the consideration of the points and errors relied upon by plaintiff in error the complete pages of the said report of the plaintiff in error to the Insurance Department of the State of Missouri from which the items and figures set forth in the additional abstract of the defendant in error in the Supreme Court of Missouri are taken,
716 which said pages of said report of the plaintiff in error to the Insurance Department of Missouri will be found in the additional abstract filed by plaintiff in error in the Supreme Court of Missouri, the same being pages 336 to 340 inclusive of the transcript of the record now on file in this Court in this cause, in order that this Court may have before it for consideration the entire pages of this report from which the items set forth in the additional abstract of the record filed by defendant in error in the Supreme Court of Missouri, as aforesaid, are taken.

The Clerk of this Court will therefore include in the record to be printed in this cause pages 336 to 340 of the transcript of the record now on file in this Court.

F. W. LEHMANN,
JAMES C. JONES,
Attorneys for Plaintiff in Error.

Service of the foregoing is hereby acknowledged this 14 day of September, 1916.

NICH. M. BRADLEY,
ROBERT KELLEY,
CHAS. MORROW,
Attorneys for Defendant in Error.

717 [Endorsed:] 633—16/25463. No. 633. October Term, 1916. In the Supreme Court of the United States. Hartford Life Insurance Company, Plaintiff in Error, v. Rosa Barber, Defendant in Error. Amendment of parts of record necessary for consideration of points relied upon by plaintiff in error. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

718 [Endorsed:] File No. 25463. Supreme Court U. S., October term, 1916. Term No. 633. Hartford Life Ins. Co., P. E., vs. Rosa Barber. Amendment to designation by P. E. of parts of record to be printed and proof of service of same. Filed Sept. 16, 1916.

Endorsed on cover: File No. 25,463. Missouri Supreme Court. Term No. 633. The Hartford Life Insurance Company, plaintiff in error, vs. Rosa Barber. Filed August 25th, 1916. File No. 25,463.

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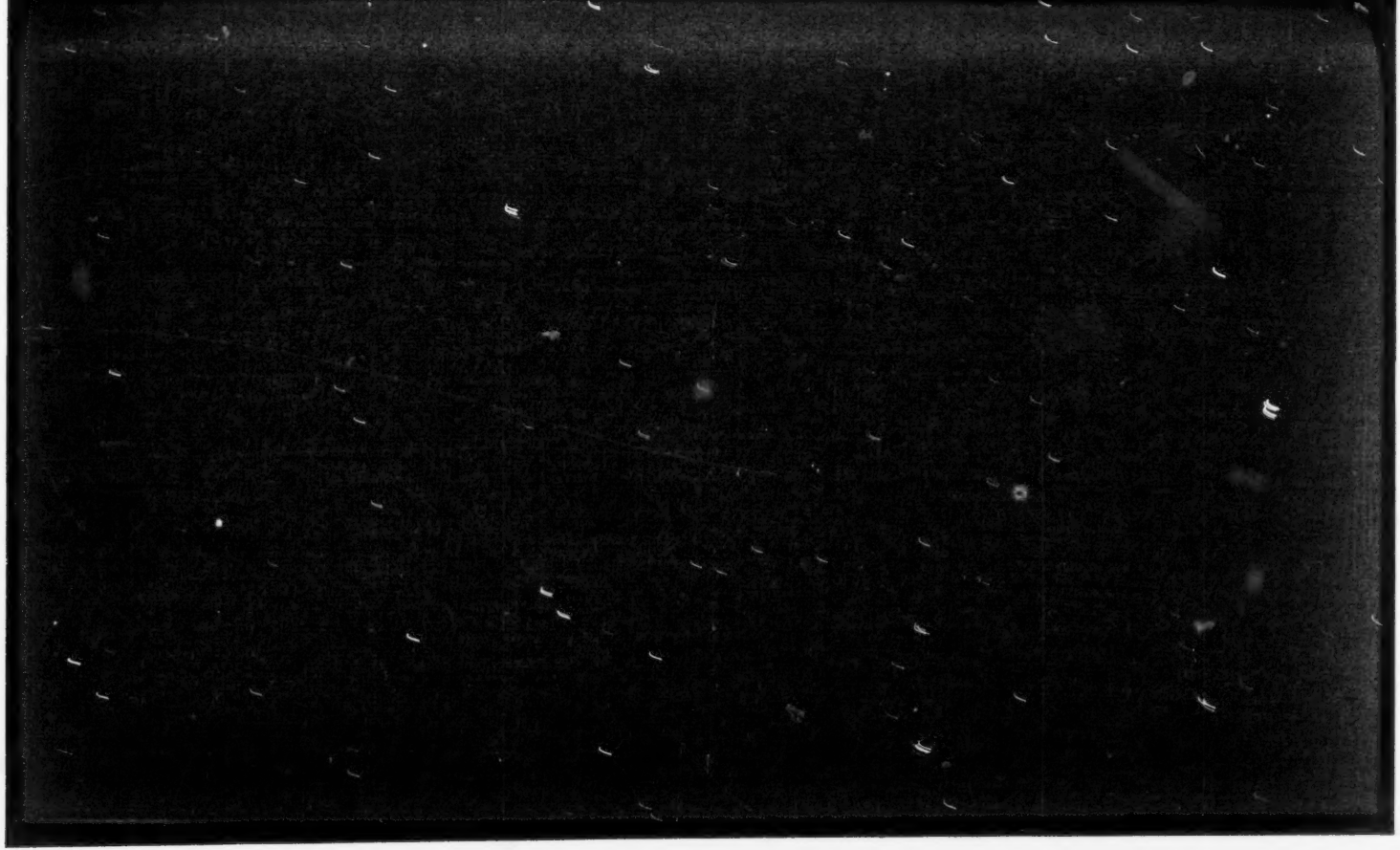

INDEX.

	Page
Statement	1
Specification of errors relied upon	5
Argument	7
Upon failure to give full faith and credit to Dresser decree	7
Analysis of decision of Supreme Court of Missouri as to Mortuary Fund	12
Upon failure to give full faith and credit to defendant's charter	24
Upon unconstitutionality of statute of Missouri as construed by its Supreme Court	35
Section 7068, Revised Statutes of Missouri, 1909	35

List of Cases Cited in Brief.

Cooley's Briefs on Insurance, Vol. II, page 1027..5-29
Conductors' Ass'n v. Birnbaum, 116 Pa. St. 565..6-31
Creswill v. Knights of Pythias, 225 U. S. 246.....5-24
Fee v. National Association, 110 Iowa 271.....5-30
Great Western Co. v. Purdy, 162 U. S. 330.....5-26
Hartford Life Insurance Co. v. Ibs, 237 U. S. 662. 1
Keller v. Home Life Insurance Co., 198 Mo. 440..6-35
Lassly v. Fountain, 4 Hening & Munford 146....5-25
Martin v. West, 110 U. S. 7.....6-34
Northern Pacific v. North Dakota, 236 U. S. 585..5-24
Sully v. American National Bank, 178 U. S. 289..6-27
Stix v. Travelers, 175 Mo. App. 171.....6-36
Supreme Ruling v. Snyder, 227 U. S. 497.....6-36
Terry v. Merchants, Etc., Bank, 66 Ga. 177, 178..5-25

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 253.

(No. 633, October Term, 1916.)

THE HARTFORD LIFE INSURANCE COMPANY, *Plaintiff in Error,* vs. ROSA BARBER, *Defendant in Error.*	In Error to the Supreme Court of Missouri.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT.

This case is a replica of Hartford Life Insurance Co. v. Ibs, 237 U. S. 662.

It is a suit against the same company upon the same form of policy on the assessment plan of life insur-

ance. There is the same defense, forfeiture of the policy for non-payment of an assessment due under it; the same confession of the fact of non-payment of the assessment and attempted avoidance of the consequence by the allegation that the assessment was illegal and void because for an excessive amount, and, finally, the same justification of the amount of the assessment as in accord with the conduct of the business of the company as approved by the decree of the Court of Connecticut in the case of Dresser *et al.* v. Hartford Life Insurance Co. *et al.*, which was pleaded by the defendant in its answer as a binding adjudication of the question.

The trial court in Missouri excluded the Connecticut decree when it was offered in evidence and instructed the jury (Rec., p. 307) that the defendant must prove that the "assessment was not for a larger amount than was necessary to pay death losses which had accrued up to that time after giving Frank Barber, deceased (the insured person) credit for his *pro rata* share of the money on hand in the mortuary fund mentioned in evidence, if you find there was money on hand in that fund, and unless the defendant has so proven it can not declare said insurance forfeited on that account".

This was directly opposed to the decree in the Connecticut case and directly opposed to the decision of this Court in the Ibs case.

The Court also instructed the jury that the defendant must prove that the assessment "was made by the directors of the defendant" (Rec., p. 307).

Both propositions were contained in the first instruction given on behalf of the plaintiff and the instruction left the company without defense to the suit.

By the second instruction the jury were told that if they found "from all the facts and circumstances shown by the evidence that its (the company's) refusal to pay was vexatious, that is, without reasonable cause, then you may allow her (the plaintiff), in addition to the amount of the policy sued upon and interest, a sum not exceeding ten per cent of the amount of the policy sued upon, together with a reasonable attorneys' fee, said attorney's fee not to exceed the sum of $500.00" (Rec., pp. 307, 308).

This second instruction was based upon Section 7068, R. S. Mo. 1909, which, as construed by the Supreme Court of Missouri, plaintiff in error contends, is in violation of the Fourteenth Article of Amendment to the Federal Constitution in that it deprives plaintiff in error of its property without due process of law.

The jury returned a verdict for the amount of the policy with interest, ten per cent penalty for vexatious delay and five hundred dollars attorneys' fee.

By proper process the case was taken to the Supreme Court of Missouri.

That Court overruled the contention of plaintiff in error as to the Missouri statute (Rec., p. 340).

As to the decree of the Connecticut court, the Missouri Supreme Court held that the trial court erred in excluding it, but further held that this error was without prejudice because the record showed affirmatively that had the Connecticut decree been received in evidence and given full effect the assessment in question was still an excessive one and therefore void (Rec., p. 344).

This finding of fact, it is contended by plaintiff in error, is without any support in the evidence and is directly against all the evidence in the case, and so is a mere evasion of the effect of the Connecticut decree. There is no dispute as to the actual facts in the case and no contradiction whatever in the evidence.

It will avoid repetition to leave to the argument the consideration of the evidence.

The Supreme Court of Missouri also held that the assessment was void because made by the officers of the company and not by its directors (Rec., p. 345).

The case comes here on writ of error to the Supreme Court of Missouri.

POINTS AND AUTHORITIES.

The assignment of errors (Rec., pp. 364 to 367) covers fully and in variant forms the errors relied upon, and the propositions under them are:

I.

The Supreme Court of Missouri denied full faith and credit to the decree of the Connecticut Court in the Dresser case by its assumed finding as a fact, without support in the evidence and against the evidence, that the assessment in question was excessive and illegal.

Creswill v. Knights of Pythias, 225 U. S. 246;
Northern Pacific v. North Dakota, 236 U. S. 585.

II.

The Supreme Court of Missouri denied full faith and credit to the Dresser decree in holding the assessment in question to be illegal because made by the officers of the company and not by the directors.

Terry v. Merchants, Etc., Bank, 66 Ga. 177, 178;
Lassly v. Fountain, 4 Henning & Munford, 146;
Great Western Co. v. Purdy, 162 U. S. 330, 334;
Cooley's Briefs on Insurance, Vol. II, No. 1027;
Fee v. National Ass'n, 110 Iowa 271;

Conductors' Ass'n v. Birnbaum, 116 Pa. St. 565;
Martin v. West, 110 U. S. 7;
Sully v. American Nat'l Bank, 178 U. S. 289.

III.

The statute of Missouri, Sec. 7068, R. S. Mo. 1909, as construed by the Supreme Court of Missouri, imposes its penalties for failing to pay a policy of life insurance regardless of the good faith of the defense, and so construed it deprives the company of its property without due process of law.

Keller v. Home Life Insurance Co., 198 Mo. 440;
Stix v. Travelers Ins. Co., 175 Mo. App. 171;
Supreme Ruling, Etc., v. Snyder, 227 U. S. 497.

ARGUMENT.

The policy here involved was on the assessment plan. Assessments were made quarterly. The proceeds of assessments were paid into what was known as the Mortuary Fund and out of this fund all death losses were paid. The company undertook to keep money in this fund so that losses could be paid promptly, and in advance of assessment therefor. This policy was inaugurated by the company years ago and has been maintained by it to the present time. In order to its maintenance it was necessary to make assessments on account of the losses thus paid in advance.

In the suit of Dresser *et al.* v. The Hartford Life Ins. Co., brought in Connecticut, this policy of keeping money in the Mortuary Fund was complained of by certificate-holders as illegal, they contending in effect that losses could be paid only after assessment therefor and out of the proceeds of the assessments made on account of them, and they prayed a distribution of the money in the Mortuary Fund, *pro rata* among themselves.

The nature of the suit, so far as here concerned, is disclosed by the decree rendered therein. The Court found and decreed:

"It was claimed by the plaintiffs that the de-

fendants were levying assessments **unnecessary in amount** and number for their own **wrongful purposes.** The Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate above set forth, quarterly, and the proceeds of such assessments when received by said Insurance Company were paid into and credited to the Mortuary Fund described in the contract of insurance. The Hartford Life Insurance Company did not levy assessments **unnecessary in amount or number.** It appeared, however, that the allowance made for discontinuance of membership, although made in good faith, often exceeded the actual amount necessary to cover the deficiency in payments arising from such discontinuances, and from that source margins of excess of payment arose from time to time, consisting of the difference between the aggregate amount actually received by said Insurance Company from such quarterly assessment, and the amount needed to pay the losses for the corresponding quarterly period. It also appeared that although the company in practice levied assessments to cover the full amount of the face value of the certificates for each death during the previous quarter, they deducted an actual payment from the face of such certificates a certain proportion of the assessment which would have been due from the certificate-holder had he survived the quarter, which sum is proportioned to the portion of such quarter which had elapsed at the time of the death of such certificate-holder, and there was, therefore, a margin

arising from this circumstance between the amount of the losses paid and the amount of the losses assessed for. These margins accumulated from time to time in the hands of the Hartford Life Insurance Company in its Mortuary Fund, have always been and are now in constant use in the prompt payment of losses in advance of the receipt of the moneys to pay the same from the regular assessments, by **which receipts the said fund is constantly reimbursed.** Said accumulation of margins, although in constant use, are capable of exact determination in amount and now amount to many thousands of dollars.

"The plaintiffs claimed it was improper and wrongful to accumulate these margins and to carry this balance in said Mortuary Fund, and claimed that said balance of margins should be distributed among the outstanding certificate-holders, **but it is held that it is proper and reasonable that the company should hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the company should hold more than the amount of one average quarterly assessment for the previous year.**

"Said fund belongs to the certificate-holders and is held in trust for them, and the Hartford Life Insurance Company has the right to hold the same, to the extent above stated, in trust for said certificate-holders and for application to the settlement of death claims and said funds should be ultimately distributed in the settlement of death claims and as hereinafter provided, before

said certificates, in accordance with their provisions, are extinguished, and the Safety Fund distributed in accord with the judgment of this Court. * * *

"It is provided in the certificates that they are payable solely from the Mortuary Fund. It is also provided by the certificates and by the trust agreement hereinbefore referred to that on the distribution of the Safety Fund among the certificate-holders, all liability on the certificates shall thereupon cease and determine."

And it was accordingly (Rec., pp. 43-44)

"Adjudged and decreed that said Mortuary Fund of the Men's Division arising from the excess of the amount received for quarterly assessments over the amount necessary for the payment of losses for said quarter, as above described, or from any other source, together with all income or interest thereon, belongs to the certificate-holders in the Men's Division of the Safety Fund Department and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department.

"Further, that in the future any excess in said fund above the average of the four preceding quarterly assessments in said Men's Division of the Safety Fund Department of said Company shall be **distributed to the certificate-holders in diminution of assessments by crediting and applying such excess on account of the next succeeding assessment.**"

The policyholders complained of the conduct of the company in respect of the assessments and the maintenance of money in the Mortuary Fund as in contravention of the provisions of the policy, but the Court found and decreed:

1. That the assessments were the acts of the Company. This inheres in the decree. Throughout the assessments are spoken of as made and levied by the Company.

2. That the assessments were not unnecessary in amount or number. And this because the Court decreed that the maintenance of money in the Mortuary Fund was proper and legitimate, in order that losses might be promptly paid. And this finding and decree includes the very assessment here in question, for it was made and levied on the 29th of January, 1910, and the decree was entered March 23rd, 1910. The insured died June 5th, 1910.

3. That the Mortuary Fund as maintained to this time was a proper fund, for the Court refused distribution of it among the policyholders.

4. That the Company might "for the purpose of enabling it to pay losses promptly" hold in the fund an amount equal to "the amount of one average quarterly assessment for the previous year." This it is conceded for the purpose of the present case is three hundred thousand dollars (Rec., p. 343).

5. That in case at any time in the future there was an excess in the Mortuary Fund "above the average of the four preceding quarterly assessments" it should "be distributed to the certificate-holders in diminution of assessments by applying such excess on account of the next succeeding assessment."

Before passing to a consideration of the action of the Supreme Court of Missouri, we call attention to the fact that money was in good faith kept in the Mortuary Fund for the prompt and advance payment of losses, attested by the fact that of the losses covered by the assessment in question, amounting to $322,378.48 all save fifteen, amounting to $41,000.00, had previously been paid.

The Supreme Court of Missouri assumes to give full faith and credit to the Connecticut decree, but finds as a fact that the assessment was excessive and void under that decree.

It says:

> "The average amount of the quarterly assessments for the preceding year had been $300,000.00, to which amount the defendant was limited by the judgment in maintaining this Emergency Fund. The assessment was levied by its express terms to pay 119 death losses therein enumerated, amounting, in benefits, to $322,378.48. On December 31, 1909, the last day of the quarter for which it was levied, all these losses except fifteen

amounting to $41,000.00, had been paid out of the fund on hand and there remained $74,938.92 On the same day there had been paid into the fund from the income account of the Safety Fund $19,447.39, making the amount left on hand $94,386.31. Deducting from this $41,000.00, the amount of the fifteen unpaid losses, left $53,386.31. In other words, the payment of all losses for which this was to be made left the last-mentioned amount on hand in the fund, to be 'replenished' by the $322,387.48. This left a Permanent Fund on hand to the amount of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut Court, and which represents the amount of excess above that authorized by the contract as modified by the judgment" (Rec., pp. 343-44).

Let us analyze this statement.

That the average amount of the quarterly assessments for the preceding year had been $300,000.00 is true.

That the assessment was levied by its express terms to pay 119 death losses therein enumerated, amounting, in benefits, to $322,387.48 is not true, for as the Court in the immediate context says "all these losses except fifteen amounting to $41,000.00 had been paid." The principal purpose and intended result of the assessment was to replenish the Mortuary Fund, and this was proper and legitimate under the Dresser decree.

There remained, the Court says, in the fund on December 31st, $74,938.92. This is true.

> "On the same day there had been paid into the fund for the income account of the Safety Fund $19,447.39, making the amount left on hand $94,386.41."

This is not true.

This sum of $19,447.39 earnings of the Safety Fund —entirely distinct from the Mortuary Fund—could only be applied by the company as a credit upon and in diminution of the dues and assessments of the members.

The uncontradicted evidence shows that this sum of $19,447.29, the earnings of the Safety Fund, was applied by the plaintiff in error in reduction of the assessment in question (Rec., pp. 157, 159, 160, 235), Barber's share thereof being $1.40 (Rec., p. 161), as shown in the notice of his assessment, as follows (Rec., p. 125):

> "Dividend to be applied if payment be made ..... $1.40."

As Barber's assessment was not paid, his share of the earnings of this fund, in accordance with the terms of the certificate, was credited back to the dividend account of the Safety Fund, and the same, together with the next payment of the dividends from

the Safety Fund, was applied to the reduction of the next assessment levied against the members of this department (Rec., pp. 202, 203).

This item, however, in our view of the case, is negligible.

From this amount of $94,386.31 which the Court says was in the fund on December 31st, 1909, it deducts the unpaid losses, enumerated in the call amounting to $41,000.00, leaving a balance of $53,386.31, to which it adds the amount of the assessment, $322,387.48. "This," said the Court, "left a permanent fund on hand of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut Court." There is an error here in addition of $8.90, which, of course, may be disregarded.

The conclusion reached by the Court is a forced one. It does not follow from the facts stated in support of it. There is no evidence that there was ever $375,764.79 in the Mortuary Fund.

The assessment was made as of December 31st, 1909, but the levy and call therefor were not made until January 29th and payments need not be made until March 1st, 1910. So money would not come in under the levy until after the call was sent out and then it would come in in increasing amounts until the last day for payment. The full amount of the call would never come in, as there would always be lapses.

How much did in fact come in the record does not show, as the trial court held everything of this sort to be immaterial. It held the levy void because made on account of losses which it was admitted had previously been paid.

The Supreme Court assumes that the only charges which could be made against this Mortuary Fund were on account of death losses enumerated in the call for the assessment and unpaid at that time, for so and so only does it get its excess.

But on December 31st and until February 1st nothing came into the Mortuary Fund and the assessment was not paid approximately in full until March 1st, 1910. Meanwhile there existed and every day were being incurred charges against the fund.

The evidence shows without dispute (Rec., p. 121) that on December 31st there were losses on account of which no assessment had been made amounting to $463,500.00, and of these $128,000.00 were unpaid (Rec., p. 273) the remainder having been previously paid out of the Mortuary Fund. This included $41,000.00 of losses enumerated in the call. But it was proper at any time to pay the losses not enumerated, and it was the judicially approved policy of the Company to pay them as rapidly as possible.

If now we charge this full amount of $128,000.00 of unpaid and unassessed for losses against the fund on December 31st, and add to the fund as being then on

hand the amount of the assessment in question, which the Court assumes was on hand, although it had not yet been called, it would leave a balance of $288,764.79, or distinctly less than $300,000.00.

This is not all. Losses were occurring daily, and by January 29th, 1910, the date of the call, and before which no money would be in on account of it, the sum of additional losses reported was $120,000.00. The experience of the Company attested by the call, and by the admitted average of its quarterly assessments, showed losses at the rate of a hundred to a hundred and fifteen thousand dollars per month (Rec., p. 121).

These additional losses aggregating $229,000.00 would almost exhaust the Fund. And it was proper that they should be paid as promptly as possible and without waiting for the next assessment, which would not be due until June 1st, 1910. That the Company regularly used the Mortuary Fund for advance payment of losses is expressly found by the Connecticut Court and is proven by the admitted fact that of the losses aggregating $322,000.00 and enumerated in the call of January 29th, all but $41,000.00 had been paid in advance.

The underlying fallacy of the Missouri opinion is that it takes the date of December 31st, 1909, and charges the Mortuary Fund not only with what was in the fund at that time, but also with the full

proceeds of an assessment determined upon at that time, but not called until a month thereafter and not required to be paid until two months thereafter. And while so charging the Fund on December 31st with the last dollar that it could possibly get in by the following March, it does not offset with liabilities of $87,000.00 existing on that same date, nor with $229,000.00 of further liabilities incurred before the assessment was fully collected.

The Missouri Court counts as in the Fund on December 31st the last dollar that could possibly come in by March 1, 1910, and allows no offset for death losses which would and should be paid in the meantime.

By anticipating all possible assets and excluding all possible liabilities, by counting money that it did not have and by excluding debts that it should and must pay, and so only, can we reach the conclusion announced by the Missouri court. The surplus in the Mortuary Fund consisted of money which it did not have and of debts which it had not paid.

The Missouri court, in fact, like the Minnesota court, tests the validity of the assessments by the requirements of the losses enumerated in the call therefor, and hinders and prevents the accumulation of the Mortuary Fund for the payment of losses, in advance of assessments therefor. The prompt payment of losses sanctioned and approved by the Dresser de-

cree is held to be illegal by the Supreme Court of Missouri as much so as by the Supreme Court of Minnesota.

The Court says (Rec., p. 344):

> "It is intimated, however, that the $87,000.00 of these losses not included in call 126 (January, 1910) had been included in previous assessments, the payment upon which had been extended out of kindness to the certificate-holders."

The only direct evidence on the subject is that of Mr. Lawrence, the vice-president of the Company, and this is found on page 121 of the record:

> "Q. Will you please state the amount of death claims incurred of which you had received notice of death which had not previously been assessed for on December 31st, 1909?
>
> A. Four hundred and sixty-three thousand five hundred dollars."

If this is true, the $87,000.00 had not been included in previous assessments.

The Court, however, says (Rec., p. 344):

> "This suggestion is given color by the report of defendant filed in the Insurance Department of Missouri as of that day, in which the following item appears: 'Net premiums in course of collection Safety Fund Department, $185,000.00.'"

This included both Men's and Women's Divisions of that fund, and with the Women's Division we have nothing to do.

The Court's conception of the report is an erroneous one. The state requires the reports of a life insurance company to exhibit its assets and liabilities. Every death loss is a liability and must be shown as such. The old line companies have their invested assets. Assessment companies have only their power of assessment. Against their losses, as soon as incurred, there is as a corresponding asset the assessment to be made on account of it, and the one balances the other.

This is explained by Mr. Lawrence on page 278 of the record, where he says that death claims "were charged as a liability in our statements to the department, but a corresponding amount for those other death claims was put in the assets under the head, 'Premiums in course of collection, Safety Fund Department' ".

This is proper and necessary as a matter of accounting, as else an assessment company would always appear without assets to offset its liabilities.

But, again, this item of $87,000.00 is negligible. Eliminate it altogether, or put it on any side of the account to which it may be assigned, and it remains true that by no mode of reckoning—except that of counting money it did not have—can it be made to appear that there was at any time a sum approximating $300,000.00 in the Mortuary Fund.

But another provision of the Dresser decree is to

be taken into account. The assessment in question was called on January 29th, 1910, and was payable on March 1st. The Dresser decree was rendered March 23d, 1910 (Rec., pp. 27 and 327). The decree recites:

> "It was claimed by the plaintiffs that the defendants were levying assessments unnecessary in amount and number for their own wrongful purposes. The Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate above set forth, quarterly, and the proceeds of such assessments, when received by said insurance company, were paid into and credited to the Mortuary Fund described in the contract of insurance. **The Hartford Life Insurance Company did not levy assessments unnecessary in amount or number**" (Rec., p. 40).

And so it denied the prayer of the plaintiffs for a distribution of the Fund as it stood at that time and decreed that "said fund belongs to the certificate-holders and is held in trust for them, and the Hartford Life Insurance Company has the right to hold the same, to the extent above stated, in trust for said certificate-holders and for application to the settlement of death claims" (Rec., p. 41).

If the holding of the Supreme Court of Missouri is correct, then, in accordance with the Dresser decree, the certificate-holders were entitled to a distribution of the surplus of $76,000.00, which it says existed on December 31st. But the Court which rendered the

decree in and by that same decree refused any distribution whatever.

If the Missouri court was right, then a large part of the money received under the call of January 29th, 1910, was wrongfully received by the Company and should have been returned, but the Connecticut court said after the call had been paid that this same money was properly held by the Company in trust for the certificate-holders "for application to the settlement of death claims." The holding of the Missouri court is squarely against the Dresser decree.

There is another provision of the decree, disregarded by the Supreme Court of Missouri, and that is the provision respecting what should be done in case there should ever be an excess in the Mortuary Fund.

The business did not admit of absolute precision. There was not absolute uniformity in the rate of losses, nor in the percentage of payments under the calls. The Dresser decree recognized this and did not fix a specific maximum for the Mortuary Fund. It was not to be in excess of the average of the four preceding quarterly assessments. In the present case that is put at $300,000,000. The call at the time it was made might, added to what was in the fund, exceed by more than $300,000.00, the amount of death claims enumerated in the call. If the fund was drawn upon sufficiently from day to day to make prompt payment before money came in under the call and

while it was coming in, there would be no surplus. But for some reason advance payments during a quarter or a year might not be made to the extent anticipated, and as a result the amount in the Mortuary Fund might exceed the average quarterly assessment for the preceding year. What would be the legal consequence? The Missouri Court holds that it would invalidate the assessments as excessive. But such a holding is in direct derogation of the Dresser decree. The Connecticut Court realized that there would be fluctuations and uncertainties in this business and that in the course of its administration the amount in the Mortuary Fund might exceed the limit indicated by it as normal and it made express provision for such a contingency in the final paragraph of the decree relating to this subject, a paragraph barely noticed by the Missouri Court in its statement of the case and not at all in its opinion. This paragraph is as follows:

> "Further, that in the future any excess in said fund above the average of the four preceding quarterly assessments in said Men's Division of the Safety Fund Department of said Company **shall be distributed to the certificate-holders in diminution of assessments by crediting and applying such excess on account of the next succeeding assessment**" (Rec., p. 44).

The next assessment under the policy would be as

of March, 1910, be called in April and payable June 1st. If, when this assessment was made, there was any excess in the fund, the insured in this case and every other certificate-holder would get the benefit of it in a corresponding reduction of the assessment. And this would be appropriate relief and to those entitled to it, against an excessive accumulation in the Mortuary Fund. To hold the assessment ineffective as to those who failed to pay is to give them relief at the expense of those who did pay. And here the Missouri court is again in conflict with the Connecticut decree.

Where, as in this case, the judgment of the State Court is based upon a finding of fact which is entirely erroneous or based upon a mistaken interpretation of the decree involved, this Court is not divested of its power of review. In this connection it is not necessary to do more than refer to the recent cases of

Creswill v. Knights of Pythias, 225 U. S. 246, 261, and

Northern Pacific Co. v. North Dakota, 236 U. S. 585, 593.

II.

The Assessment Was Levied by Proper Authority.

The charter of the plaintiff in error, which is in evidence in this cause, was granted by the General Assembly of the State of Connecticut in the year 1866,

and contains the following provision (Rec., p. 70):

> "All the affairs of said corporation shall be managed and controlled by a board of not less than seven directors (the number of said directors to be determined by the by-laws of said company)."

The evidence shows that the assessment in question (as well as all previous assessments) was made and levied by the president and secretary of the plaintiff in error (Rec., pp. 255, 262). The Missouri Supreme Court holds that under the quoted provision of this charter the officers of the plaintiff in error were without power to make and levy the assessment in question. The Court ignores the undisputed evidence that all previous assessments had been made and levied by the officers of the plaintiff in error, as well as the contention that this amounted to a delegation by the Board of Directors of the power to make and levy these assessments, and, in effect, treats this power as one which was non-delegable by the Board of Directors.

The charter in question being a legislative charter, granted by the Legislature of the State of Connecticut, it is a public act or record of that state (Terry v. Merchants' and Planters' Bank, 66 Ga. 177, 178; Lassly v. Fountain, 4 Hening & Munford 146) and

entitled to full faith and credit under Article IV, Section 1, of the Constitution of the United States. Therefore, the question whether or not, under the foregoing provision of this charter, the exclusive power to make and levy these assessments is vested in the Board of Directors, or whether such power is one which can be delegated to the officers, is one for this Court to determine. In this connection the Court in Great Western Telegraph Company v. Purdy, 162 U. S. 330, 334, in holding that it was within its province to determine the effect of an order or judgment of the State of Illinois to which the plaintiff in error claimed the Supreme Court of Iowa had failed to give full faith and credit, says:

> "The plaintiff relied on the order of assessment, made by a court of the State of Illinois, as a judgment of that Court, entitled to the effect of being conclusive evidence of the plaintiff's right to maintain this action against the defendant. The Supreme Court of the State of Iowa denied it that effect. The question whether that Court thereby declined to give full faith and credit to a judicial proceeding of a court of another state, as required by the Constitution and laws of the United States, was necessarily involved in the decision.
>
> "This Court therefore has jurisdiction of the case, **but must judge for itself of the true nature and effect of the order relied on** (Armstrong v. Treasurer of Athens County, 16 Pet. 281, 285;

Texas & Pacific Railway v. Southern Pacific pany, 137 U. S. 48; Grover & Baker Company v. Radcliffe, 137 U. S. 287; Carpenter v. Strange. 141 U. S. 87; Huntington v. Attrill, 146 U. S. 657, 666, 683, 686."

The defendant in error also raises some question as to the time in which the claim was made that the Supreme Court of Missouri refused to give full faith and credit to the charter of the plaintiff in error, the contention being that the same should have been raised in the trial court.

It has been repeatedly held by this Court that when a constitutional question is decided adversely by the State Court it will not consider the contention that the constitutional question was not raised at the earliest possible moment in the State Court or that the constitutional question had not been so raised as to have been properly the subject of review under the State practice (Sully v. American National Bank, 178 U. S. 289).

Furthermore, the plaintiff in error made the constitutional objection at the first opportunity. There was no issue made by the pleadings in this case that the assessment was illegal or void because it was not made by the Board of Directors. It is true that in an instruction given by the trial court the jury were told, among other things, that the burden of proof was upon the plaintiff in error to show that the directors

had levied this assessment, but, as it had been shown by the evidence that all previous assessments had been made and levied by the officers, this was equivalent to a delegation by the Board of Directors to the officers of the right to make and levy these assessments, and the plaintiff in error had therefore fulfilled the burden of proof imposed upon it by this instruction. It was not until the case reached the Supreme Court of Missouri that it was held that the exclusive power to make and levy these assessments resided in the Board of Directors and could not be delegated to the officers of the plaintiff in error, whereupon the plaintiff in error, in its motion to transfer this cause from Division No. 1 of the Supreme Court of Missouri to the full court for determination (Section 4 of the Amendment of 1890 to Article VI of the Missouri Constitution providing that if a constitutional question is involved in the case the same shall, on the application of the losing party, be transferred to the entire court for consideration), assigned as one of the grounds of error that the divisional opinion failed to give full faith and credit to Article IV, Section 1, of the Constitution of the United States for the reasons set forth herein.

The proposition itself that only the Directors could make the levy is unsound. In all the cases cited by the Missouri Supreme Court to sustain its view either the certificate or the organic law of the Company or a statute provided expressly that the assessment should

be made by the Board of Directors of the Association. There is no such provision in the contract here involved nor in the charter of the Company.

In the absence of such express provision in contract, charter or statute it has been uniformly held that this power may be delegated to any officers of the Company.

In Cooley's Briefs on Insurance (Vol. II, p. 1027), it is said:

> "Delegation of power. If the by-laws of a mutual benefit insurance society provide that assessments for death losses **shall be levied by the Board of Directors**, the Board can not delegate such power to the president (Garretson v. Equitable Mut. Life & Endowment Ass'n, 93 Iowa 402, 61 N. W. 952). But where the articles of a company provided that the directors should control its affairs, and empowered them to enact by-laws and rules and to appoint from their number an executive committee who should supervise the business of the company and audit accounts and provide for assessments, but was **silent as to who should make them, the directors had authority through a by-law, to empower the Executive Committee to make assessments** (Fee v. National Masonic Acc. Ass'n, 81 N. W. 483, 110 Iowa 271). So, where the constitution of a beneficial association provided that on certain fixed dates, or at such other dates as the Board of Directors might determine, an assessment should be made on the entire membership for such sums as the Executive Committee might deem sufficient, an assess-

ment authorized by a resolution of the Board of Directors as to the date of making it, and by a resolution of the Executive Committee as to the amount and necessity, was **not void because the directors had delegated their power to make the assessment to the Executive Committee** (Miles v. Mut. Reserve Fund Life Ass'n, 84 N. W. 159, 108 Wis. 421. Where the by-laws of an association required all assessments to be made by the directors and provided that the chairman should approve all proofs of death, and, on receipt of a claim for benefits on the death of a member, for which notice, but no proofs, had been received, and **instructed the secretary, if the proofs were found correct, to issue notices of assessment, and the proofs were examined and the assessments made according** to directions, the assessment is valid and binding (Passenger Conductors' Life Ins. Co. v. Birnbaum, 116 Pa. 565, 11 Atl. 378)."

In Fee v. National Association, 110 Iowa 271, the articles of incorporation of the defendant Association provided, as here, that the affairs of the Association be controlled by its Board of Directors and the Board of Directors enacted a by-law whereby an executive committee was empowered to make and levy assessments under its certificate. The Court said.

> "It is asserted that as the assessment was made by the **Executive Committee,** appointed by the **Board of Directors,** it is illegal, in that such body **can not delegate this authority. By-law 17** em-

powered the Executive Committee to levy assessments. Article IV of the articles of incorporation provided for the election of nine directors, each holding for three years, to control its affairs, and who shall have power to enact such by-laws and rules as they may deem for the best interests of the association, and who shall appoint from their number an executive committee of three members, who shall have immediate supervision of the business of the association, and shall examine and audit all claims, bills, accounts and reports. While **Article VIII relates to assessments, it does not provide who shall make them. The principal business** of the association was to **make assessments** and distribute them, when collected, to the parties entitled thereto. The immediate supervision of this business by an executive committee is expressly authorized and the power to enact by-laws for the best interests of the society given. We think, under this article, the Board of Directors was authorized to adopt by-law 17, under which the Executive Committee made the assessment. Garretson v. Association, 93 Ia. 402, relied on by appellant, is not in point. There, **the articles of incorporation required the** assessment to be made by the **Board of Directors,** and it was held that in such a case the president and secretary might not do so."

In Conductors' Association v. Birnbaum, 116 Pa. St. 565, the board of directors of the defendant association ordered that when proofs of death were received, the secretary of the association should make

an assessment and send notice thereof to the members. An assessment was made by the secretary, which the assured failed to pay. The assured having subsequently died, the beneficiary brought suit on the certificate, claiming that the assessment which the insured had failed to pay was illegal and void because it had not been made and levied by the board of directors. The trial court held that the assessment was illegal and void because it was not actually made and levied by the board of directors of the defendant association, but, in reversing the ruling of the trial court in this regard, the Supreme Court of Iowa says:

> "**We think the Court below erred in instructing the jury that assessment No. 117 upon the death of Skinner was illegal.** It is conceded that if Birnbaum was in default, his widow has no claim. That he did not pay assessment No. 117 is not disputed. It is said, however, that it was illegally assessed. That it was done in entire **good faith** can hardly be questioned. That it was done in **such manner as to save delay** and give the deceased member's family their money as early as practicable seems equally clear. **The mode of making the assessment** was **the usual mode**; it was done by a mutual association of which Birnbaum was a member, and it was admittedly a just and proper assessment, **one which the company was bound in good faith to make.**"

The making and levying of the assessment in question was in the nature of a ministerial act and not a highly discretionary act, as held by the Supreme Court of Missouri, and involved very little, if any, discretion. The assessments are fixed and determinable by the table of rates in the certificate and the amount of the unassessed for death losses outstanding at the time the assessment was levied. The only discretion required in making and levying these assessments is in the determination of the amount which the company shall allow for the failure of certain members to pay such assessment, and this involves very little, if any, discretion, as the amount of such allowance was based on the number of members that had failed to pay the preceding assessment. Furthermore, if the allowance actually made for discontinuance of membership was greater than that actually experienced in the assessment in question the difference remained in the Mortuary Fund and was applied to the payment of death losses (Rec., pp. 203, 204); thereby necessarily resulting in a decrease in the amount of subsequent assessments to be levied against the members.

We submit that the holding of the Supreme Court of Missouri, that the making and levying of these assessments required the exercise of high discretion, is without merit, but even if so, it was a delegable power; and that it was delegated in this case is estab-

lished by the fact that all the assessments for many years preceding the assessment in question were made and levied by the officers and not by the board of directors (Rec., pp. 255, 262); (Martin v. West, 111 U. S. 7).

But the entire question is foreclosed by the Dresser decree. Connecticut is the home of the corporation and it was for the Court of that State to construe its charter powers and the propriety of its action in the exercise of them. That Court held the assessments as made to be the valid action of the Company. This holding inheres in the decree throughout. And that the assessments were the acts of the Company was repeated over and over again. The fact was alleged by the plaintiffs in that suit. They sought to recover the amount in which it was alleged the assessments were excessive from the Company, as having been levied and received by the Company. But this the Court denied and held that the assessments were not excessive, nor the conduct of the business respecting them wrongful. And the money in the Mortuary Fund brought in by the assessment in question and by previous assessments was decreed to belong to the certificate-holders and to be held in trust for them "and the Hartford Life Insurance Company has the right to hold the same, to the extent above stated, **in trust for said certificate-holders and for application to the settlement of death**

claims" (Rec., p. 41). Now to hold that the assessment was illegal is to hold that the Company had no right to the funds and so is to destroy entirely the efficacy of the Dresser decree.

III.

The Penalty Statute.

The statute, Sec. 7068, R. S. Mo. 1909, is as follows:

> "In any action against any insurance company to recover the amount of any loss under a policy of fire, life, marine or other insurance, if it appear from the evidence that such company has vexatiously refused to pay such loss, the Court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not exceeding ten per cent on the amount of the loss and a reasonable attorney's fee; and the Court shall enter judgment for the aggregate sum found in the verdict."

We recognize that similar statutes have been upheld by this Court, but not as construed by the Supreme Court of Missouri.

In Keller v. Home Life Ins. Co., 198 Mo. 440, the Court said:

> "The statute will not admit of the construction contended for by counsel for plaintiff in error that before damages are allowed it must be expressly proved by the plaintiff that the delay or refusal was vexatious."

What this means is shown by the case of Stix v. Travelers Ins. Co., 175 Mo. Appeals 171, wherein the Court said:

> "The fact that defendant declined to compensate the loss without litigation is of itself evidence to prove the delay thereby to be vexatious. Such is the established rule of decision."

In the case of Supreme Ruling, Etc., v. Snyder, 227 U. S. 497, this Court, dealing with a similar statute, said:

> "The act does not make the mere refusal to pay sufficient evidence of bad faith, so as to justify the added recovery; it requires that the bad faith be shown and that the consequent additional loss be shown."

In the present case there was no evidence offered to show bad faith by the defendant. It declined to pay the policy because the assessments under it had not been met. The trial was had before the Ibs case was decided by this Court. The defense made and the issues presented were essentially the same as in the Ibs case and which there were held to be good. The Dresser decree, pleaded in defense, but rejected when offered in evidence, could, in view of the Missouri Court, be taken by the jury as sufficient evidence upon which to base the penalty prescribed by the statute. The

effect of the statute as construed by the Supreme Court of Missouri is to punish any defense whatever.

There are a number of statements in the opinion of the Supreme Court of Missouri without support in the record, as, for example, that the Company contends that the policy was properly forfeited for the non-payment of ten cents. No such claim was made by the Company. The insured was bound to pay his quarterly dues and assessments, and for failure to do this *in toto* his policy was forfeited. He did not make or tender any partial payment of any amount.

So, too, it is said (Rec., p. 341) that the Connecticut court by its decree "attempted to make some radical changes in the contract" and that this attempt "has received the endorsement of the Supreme Court of the United States". The Connecticut court having jurisdiction of the case construed the contract and this court simply gave faith and credit to the Connecticut decree.

The Company is said to have had a checkered career and for no other reason than that by amendment of its articles it changed its name.

Also, that it "was accumulating large funds at the expense of the policyholders and withholding them as long as possible from distribution". There is nothing to support this charge and it is in the very face of the Dresser decree. The Mortuary Fund was a proper accumulation used for proper purposes.

But these and like matters are merely incidental to the issues involved, or are entirely immaterial to those issues, and we will not extend this discussion for their consideration.

The judgment of the State Court should be reversed for the reasons assigned.

Respectfully submitted,

JAMES C. JONES,

F. W. LEHMANN,

Attorneys for Plaintiff in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 633.

THE HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs.

ROSA BARBER,
Defendant in Error.

} In Error to the Supreme Court of Missouri.

BRIEF OF PLAINTIFF IN ERROR ON MOTION TO DISMISS OR AFFIRM.

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INDEX.

	Page
Statement	1
Issues in this case similar to Hartford Life Insurance Company v. Ibs, 237 U. S. 662	1
Connecticut decree pleaded	2
Supreme Court of Missouri recognized that Connecticut decree was involved	2
Points and authorities	3
Argument	5
Supreme Court of Missouri failed to give full faith and credit to Connecticut decree	5
Analysis of Dresser decree	6
Opinion of Supreme Court of Missouri	10
Errors in opinion of Supreme Court of Missouri	11
Connecticut decree upholds validity of assessment in question	17
Holding of Supreme Court of Missouri nullifies Dresser decree	17
Holding of Supreme Court of Missouri that the exclusive power to levy the assessment resided in Board of Directors denies full faith and credit to the legislative charter of plaintiff in error	19
Officers of plaintiff in error had power to levy the assessment	24
Connecticut decree upheld the validity of assessment in question	29
Section 7068, Revised Statutes of Missouri 1909, as construed by Supreme Court of Missouri, is unconstitutional	30

List of Cases Cited in Brief.

	Page
Boston Power Co. v. Massachusetts, 97 U. S. 25..	22
Cooley's Briefs on Insurance, Vol. II, page 1027..	24
Conductors' Ass'n v. Birnbaum, 116 Pa. St. 565..	27
Creswell v. Knights of Pythias, 225 U. S. 246...	5
Fee v. National Association, 110 Iowa 271.....	25
Great Western Co. v. Purdy, 162 U. S. 330.....	21
Green v. Van Buskirk, 7 Wall. 139.....	32
Hartford Life Ins Co v Ch 237 U.S. 662	7
Keller v. Home Life Insurance Co., 198 Mo. 440..	31
Lassly v. Fontain, 4 Hening & Munford 146.....	20
Martin v. West, 110 U. S. 7.....	29
McCormick v. Unity Co., 140 Ill. App. 159, affd. 209 Ill. 306.....	29
Northern Pacific v. North Dakota, 236 U. S. 585.	6
Scully v. American National Bank, 178 U. S. 289.	22
Stix v. Travelers, 175 Mo. App. 171.....	31
Supreme Ruling v. Snyder, 227 U. S. 497.....	31
Terry v. M. & P. Bank, 66 Ga. 177.....	20

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STATEMENT.

This case involves substantially the same questions that were before this Court in Hartford Life Insurance Company v. Ibs., 237 U. S. 662.

It is a suit based on the same kind of policy and against the same Company.

The defense here, as there, was that the policy had

become forfeited by non-payment of an assessment due and payable under its terms.

Here, as there, the beneficiary of the policy contended that the assessment was excessive, and, therefore void, and here, as there, it was urged on behalf of the Company that this question had been determined in favor of the Company by the decree of the Court of Connecticut in the case of Dresser *et al.* v. Hartford Life Insurance Company *et al.*, and here, as there, this decree was pleaded by the company and offered in evidence, but rejected by the trial court.

A Federal question was thus plainly involved in the case and the determination of that question was adverse to the Company.

On appeal to the Supreme Court of the State, this Federal question was recognized as involved in the case, and the Court held that the Dresser decree should have been admitted in evidence, but that, considering it as in evidence, the plaintiff was still entitled to recover, because, (1) under the terms of the Dresser decree the assessment was excessive; and (2) the assessment was levied by the President and Secretary of the Company, when only the Board of Directors had power to levy it.

The contention of the defendant in error is, therefore, that full faith and credit were given to the Dresser decree, which the plaintiff in error denies.

The constitutionality of Sec. 7068 R. S. Mo. 1909 is also drawn into question.

POINTS AND AUTHORITIES.

I.

The holding of the Supreme Court of Missouri that the assessment in question was excessive denied full faith and credit to the decree of the Connecticut court in the Dresser case.

Creswill v. Knights of Pythias, 225 U. S. 246;
Northern Pacific v. North Dakota, 236 U. S. 585.

II.

Full faith and credit was denied to the Dresser decree by the ruling of the Supreme Court of Missouri that the assessment was not legally made.

Terry v. M. & P. Bank, 66 Ga. 177;
Lassly v. Fontaine, 4 Hening & Munford 146;
Great Western Co. v. Purdy, 162 U. S. 330;
Boston Power Co. v. Massachusetts, 97 U. S. 25;
Scully v. Am. Nat'l Bank, 178 U. S. 289.

III.

The statute of Missouri, Sec. 7068, R. S. Mo. 1909, as construed by the Supreme Court of Missouri, imposes a penalty for failing to pay a policy of life insurance regardless of the good faith of the defense

and so deprives the plaintiff in error of its property without due process of law.

Keller v. Home Life Insurance Co., 198 Mo. 440;
Stix v. Travelers Ins. Co., 175 Mo. App. 171;
Supreme Ruling, Etc., v. Snyder, 227 U. S. 497.

IV.

Substantial Federal questions are involved in the case, and it should be heard upon its merits.

Green v. Van Buskirk, 7 Wall. 139.

ARGUMENT.

I.

THE AMOUNT OF THE ASSESSMENT.

It is conceded at the outset that if there is any conflict of testimony in the case, this Court will not review the determination of the fact by the Supreme Court of the State. But there is no conflict in the testimony whatever. The facts are undisputed. The State Court reached a wrong conclusion upon the facts, or, stating the matter more accurately, it misinterpreted the Dresser decree, and so denied to it full faith and credit. An analysis of the facts is indeed called for in the consideration of the case, but that does not preclude review by this Court. The rule in this regard is stated in Creswill v. Knights of Pythias, 226 U. S. 246, *l. c.* 261, as follows:

> "While it is true that upon a writ of error to a state court we do not review findings of fact, nevertheless, two propositions are as well settled as the rule itself, as follows: *(a)* that where a Federal right has been denied as the result of a finding of fact which it is contended there was no evidence to support and the evidence is in the record, the resulting question of law is open for decision; and *(b)* that where a conclusion of law as to a Federal right and finding of fact are so intermingled as to cause it to be essentially

necessary for the purpose of passing upon the Federal question to analyze and dissect the facts to the extent necessary to do so, the power exists as a necessary incident to a decision upon the claim of denial of the Federal right (Kansas City Southern Railway Company v. Albers Commission Company, 223 U. S. 573, 591; Cedar Rapids Gas Company v. Cedar Rapids, 225 U. S. 665, 668; State of Washington *ex rel.* v. Fairchild, 224 U. S. 510)."

To the same effect is Northern Pacific Railway Company v. North Dakota, 136 U. S. 585, 593.

The insurance was upon the assessment plan. The proceeds of assessments were paid into a mortuary fund and losses were paid out of this Mortuary Fund. A considerable sum accumulated in this Mortuary Fund varying in amount from time to time, and out of it losses were frequently paid in advance of assessments therefor. Assessments were later made on account of losses which had thus been paid and the Mortuary Fund was thus replenished (Rec., pp. 232 237).

In the Dresser case it was contended on behalf of policy holders that the Company had no right to maintain this Mortuary Fund, and that assessments made to replenish it were illegal and excessive. A distribution of the accumulation of the fund was asked, the result of the contention, if successful, being that the fund must be discontinued, and that

losses could be paid only after collection of assessments made therefor. The Court, however, overruled this contention and held (Rec., pp. 40-41):

> "It was claimed by the plaintiffs that the defendants were levying assessments **unnecessary in amount** and number for their own **wrongful purposes.** The Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate above set forth, quarterly and the proceeds of such assessments when received by said Insurance Company were paid into and credited to the Mortuary Fund described in the contract of insurance. The Hartford Life Insurance Company did not levy assessments **unnecessary in amount or number.** It appeared, however, that the allowance made for discontinuance of membership, although made in good faith, often exceeded the actual amount necessary to cover the deficiency in payments arising from such discontinuances, and that from that source margins of excess of payment arose from time to time, consisting of the difference between the aggregate amount actually received by said insurance company from such quarterly assessment, and the amount needed to pay the losses for the corresponding quarterly period. It also appeared that although the Company in practice levied assessments to cover the full amount of the face value of the certificates for each death during the previous quarter, they deducted, an actual payment from the face of such certificates a certain proportion of the as-

sessment which would have been due from the certificate holder had he survived the quarter, which sum is proportioned to the portion of such quarter which had elapsed at the time of the death of such certificate holder, and there was, therefore, a margin arising from this circumstance between the amount of the losses paid and the amount of the losses assessed for. These margins accumulated from time to time in the hands of the Hartford Life Insurance Company in its Mortuary Fund, have always been and are now in constant use in the prompt payment of losses in advance of the receipt of the moneys to pay the same from the regular assessments, by which receipts the said fund is constantly reimbursed. Said accumulation of margins, although in constant use, are capable of exact determination in amount and now amount to many thousands of dollars.

The plaintiffs claimed it was improper and wrongful to accumulate these margins and to carry this balance in said Mortuary Fund, and claimed that said balance of margins should be distributed amongst the outstanding certificate holders, but it is held that it is proper and reasonable that the company should hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the company should hold more than the amount of one average quarterly assessment for the previous year.

"Said fund belongs to the certificate-holders and is held in trust for them, and the Hartford

Life Insurance Company has the right to hold the same, to the extent above stated, in trust for said certificate-holders and for application to the settlement of death claims and said funds should be ultimately distributed in the settlement of death claims and as hereinafter provided, before said certificates, in accordance with their provisions, are extinguished, and the Safety Fund distributed in accord with the judgment of this Court.

"It is provided in the certificates that they are payable solely from the Mortuary Fund. It is also provided by the certificates and by the trust agreement hereinbefore referred to that on the distribution of the Safety Fund among the certificate-holders, all liability on the certificates shall thereupon cease and determine."

And it was accordingly (Rec., pp. 43-44)

"adjudged and decreed that said Mortuary Fund of the Men's Division arising from the excess of the amount received for quarterly assessments over the amount necessary for the payment of losses for said quarter, as above described, or from any other source, together with all income or interest thereon, belongs to the certificate-holders in the Men's Division of the Safety Fund Department, and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department.

"Further, that in the future any excess in said fund above the average of the four preceding

quarterly assessments in said Men's Division of the Safety Fund Department of said Company shall be **distributed to the certificate-holders in diminution of assessments by crediting and applying such excess on account of the next succeeding assessment.**"

In the Ibs case the State Court held that the Company could levy an assessment only for an amount not exceeding the unpaid losses, after exhausting what was in the Mortuary Fund, and this ruling was held by this Court to be in derogation of the Dresser decree.

In the case at bar, while the trial court excluded the Dresser decree altogether, the Supreme Court assumes to give it effect and declares that it has done so. But how?

The Court says:

> "The average amount of the quarterly assessments for the preceding year had been $300,000, to which amount the defendant was limited by the judgment in maintaining this emergency fund. The assessment was levied by its express terms to pay 119 death losses therein enumerated, amounting, in benefits, to $322,378.48. On December 31st, 1909, the last day of the quarter for which it was levied, all these losses except fifteen, amounting to $41,000.00, had been paid out of the fund on hand, and there remained $74,938.92. On the same day there had been paid into the fund from the income account of the Safety Fund

> $19,447.39, making the amount left on hand $94,386.31. In other words, the payment of all losses for which this was to be made left the last mentioned amount on hand in the fund to be 'replenished' by the $322,387.48. This left a permanent fund on hand to the amount of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut Court'' (Rec., pp. 343-4).

This statement is inaccurate in several important respects.

The assessment was not levied to pay the 119 death losses therein enumerated. As in the Ibs case, the greater part of the losses enumerated had been paid previously out of the Mortuary Fund, which was maintained for the very purpose of enabling losses to be paid in advance of assessments therefor. The levy was for the purpose of replenishing the Mortuary Fund.

The sum of $19,447.39, earnings of the Safety Fund, the Court adds to the amount in the Mortuary Fund on December 31st, 1909, but this money, under the terms of the certificate, could only be applied by the plaintiff in error as a credit upon and in diminution of the dues and assessments of the members of this department. The uncontradicted evidence shows that this sum of $19,447.39, the earnings of the Safety Fund, was applied by the plaintiff in error in reduction of the assessment in question (Rec., pp.

157, 159, 160, 235), Barber's share thereof being $1.40 (Rec., p. 161), as shown in the notice of his assessment, as follows (Rec., p. 125):

"Dividend to be applied if payment be made.....$1.40"

As Barber's assessment was not paid, his share of the earnings of this fund, in accordance with the terms of the certificate, was credited back to the dividend account of the Safety Fund, and the same, together with the next payment of the dividends from the Safety Fund, was applied to the reduction of the next assessment levied against the members of this department (Rec., pp. 202, 203).

The Court assumes that the full amount of the levy, $322,387.48, was added to the Mortuary Fund on **December 31st**, when the call therefor did not go out until **January 29th**, and payments thereunder need not be made until **after March 1st.** But adding together the amount in the Mortuary Fund, the income from the Safety Fund and the amount of the levy, which never would be paid in full, the Court finds the amount in the Mortuary Fund on the 31st of December to be $375,764.79, when, in fact, as the indisputable evidence shows, there was but $74,938.92.

The Court further assumes that the only charges which could legitimately be made against this Mortuary Fund were on account of the death losses

enumerated in the call for the assessment and unpaid at that time, which was just what the Minnesota court held in the Ibs case and what this Court in that case held to be in contravention of the decree in the Dresser case.

The evidence shows, without dispute (Rec., p. 121) that on December 31st, 1909, there were losses on account of which no assessment had been made, amounting to $463,500, and of these losses $128,000 were unpaid (Rec., pp. 272-274), the remainder having been paid previously out of the Mortuary Fund. It was proper to make a levy to replenish the Mortuary Fund on account of all losses for which no assessment had been made. And every dollar in the fund at that time or coming into it thereafter was properly applicable to the payment of the $128,000 of losses remaining unpaid. Adding the amount of the levy to the amount in the fund and we have $397,-326.40. Deduct from this the $128,000 of unpaid losses and we have left $269,326.00, and not $375,-764.79, as stated by the Missouri Court.

But this is not all. Losses were occurring continuously and it was proper to make prompt payment of them out of the Mortuary Fund, and in advance of an assessment on account of them. By January 29th, 1910, the amount of additional losses reported was $120,000, and the experience of the Company showed that losses occurred at the rate of $100,000 to $115,000

a month (Rec., p. 121). The money in the Mortuary Fund was applicable to the payment of any or all of these losses, so that before another quarterly assessment could be made and collected the last dollar in the fund might well be exhausted.

The undisputed facts, then, are that on December 31st, 1909, there was $74,938.92 in the Mortuary Fund; that there had occurred losses up to that time for which no assessment had been made and for which it was proper to make assessment, amounting to $463,500; that of these losses $128,000 were still unpaid; that losses were accumulating at the rate of more than $100,000 a month, and that, under these circumstances, with the right adjudicated in the Dresser case, to keep a sum limited to the average of the four preceding assessments in the Mortuary Fund, the Company levied an assessment of $322,387.84, or an amount distinctly less than enough to meet demands in sight, which, if met promptly, would not leave one dollar in the fund.

The Missouri Court states in its opinion (Rec., p. 344) that all of the unpaid death losses outstanding on December 31st, 1909, "should have been included in that assessment," but we submit that this was a matter for the Company and not for the Court to determine. Besides, it would have increased, and not diminished, the amount of the assessment.

The Court also says (Rec., p. 344) it is intimated that the losses unpaid on December 31st, 1909, and not

included in this assessment had been included in some previous assessment, but this is without support in and directly against the evidence (Rec., p. 121). The Court also says that:

> "This suggestion is given color by the report of defendant filed in the Insurance Department of Missouri as of that day, in which the following item appears: 'Net premiums in course of collection Safety Fund Department, $185,000.'"

This included both men's and women's divisions of that fund and with the Women's Division we have nothing to do. The report, however, indicates nothing to the purpose. It is required to show the assets and the liabilities of the Company. Every death loss is a liability and must be shown as such. Against that liability, as soon as it is incurred, there is, as a corresponding asset, the assessment to be made on account of it, and so the one balances the other (Rec., pp. 277, 278).

But if the losses existing on December 31st unpaid and not included in the levy calculated as of that date, amounting to $87,000, are eliminated altogether, it does not affect the case, for by no method of reckoning, and by no inference drawn or construction put upon the evidence, can it be made to appear that there was at any time more than $300,000 in the Mortuary Fund.

We know only that on December 31st, 1909, there was $74,938.92 in the fund—a very small amount, considering the rate of loss occurring. We know further that there was a call made, calculated as of that same date, for $322,387.48, not all of which would ever be paid, and none of which would be paid prior to January 29th, 1910, because the call was not made until that time. From January 30th until the last day for payment, March 5th, 1910, responses might be expected in number increasing as time went on. Meanwhile, losses were accumulating every day which could be and should be paid promptly as possible out of any money in the Mortuary Fund, no matter by what assessment brought in. Under these circumstances the Supreme Court of Missouri finds that there was $375,000 in the Mortuary Fund on December 31st, 1909, and that therefore the assessment calculated as of that date, but not sent out for a month thereafter, was not warranted under the decree in the Dresser case.

The Missouri Court, like the Minnesota Court, tests the validity of the assessments by the requirements of the losses enumerated in the call therefor, and hinders and prevents the accumulation of the Mortuary Fund for the payment of losses in advance of assessments therefor. The prompt payment of losses sanctioned and approved by the Dresser decree is

held to be illegal by the Supreme Court of Missouri as much so as by the Supreme Court of Minnesota.

There is another feature of the Dresser decree which must be taken into account. The Connecticut Court found specifically in favor of the validity of the assessments up to and including the date of its decree, March 23rd, 1910 (Rec. pp. 27, 327). It said:

> "It was claimed by the plaintiffs that the defendants were levying assessments unnecessary in amount and number for their own wrongful purposes. The Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate above set forth, quarterly, and the proceeds of such assessments when received by said Insurance Company were paid into and credited to the Mortuary Fund described in the contract of insurance. **The Hartford Life Insurance Company did not levy assessments unnecessary in amount or number**" (Rec., p. 40).

And so it refused distribution of the amount then in the Mortuary Fund, among the policy holders.

At the same time it made provision for the future. The business did not admit of absolute precision and the decree recognized this and so the specific maximum amount in the Mortuary Fund was not prescribed. It was not to be in excess of "the average of the four preceding quarterly assessments". In the present case that is put at $300,000. As the standard is derived from the past, it might happen

that at some time there would be more than this average in the Fund. For some reason, advance payments during a quarter or a year might not be made to the extent anticipated, and as a result the amount in the Mortuary Fund would exceed the average quarterly assessment for the preceding year. What would be the legal consequence? The Missouri Court holds that it would invalidate the assessments as excessive. But such a holding is in direct derogation of the Dresser decree. The Connecticut Court realized that there would be fluctuations and uncertainties in this business and that in the course of its administration the amount in the Mortuary Fund might exceed the limit indicated by it as proper, and it made express provision for such a contingency in the final paragraph of the decree relating to this subject, a paragraph barely noticed by the Missouri Court in its statement of the case and not at all in its opinion. This paragraph is as follows:

> "Further that in the future any excess in said Fund above the average of the four preceding quarterly assessments in said men's division of the Safety Fund Department of said Company **shall be distributed to the certificate holders in diminution of assessments by crediting and applying such excess on account of the next succeeding assessments**" (Rec., p. 44).

Under its decree the occurrence of an excess in the

Mortuary Fund did not relieve those from payment who had not contributed thereto, but did relieve the contributors *pro tanto* on the next assessment. This was a just provision. It gave appropriate relief, and to those entitled to it, against an excessive accumulation in the Mortuary Fund.

The Missouri Court disregards the Connecticut decree and gives relief to those who did not pay at the expense of those who did.

II.

The Decision of the Supreme Court of Missouri That the Exclusive Power to Make and Levy the Assessments Under the Certificate Resided in the Board of Directors of the Plaintiff in Error, and That the Officers of the Plaintiff in Error Had No Power to Make and Levy the Assessment, Is Not an Independent or Non-Federal Question, But Is a Federal Question.

The charter of the plaintiff in error which is in evidence in this cause was granted by the General Assembly of the State of Connecticut in the year 1866 and contains the following provision (Rec., pp. 68, 70):

> "All the affairs of said corporation shall be managed and controlled by a board of not less than seven directors (the number of said directors to be determined by the by-laws of said company)."

The evidence shows that the assessment in question (as well as all previous assessments) was made and levied by the President and Secretary of the plaintiff in error (Rec., pp. 255, 262). The Missouri Supreme Court holds that under the quoted provision of this charter the officers of the plaintiff in error were without power to make and levy the assessment in question. The Court ignores the undisputed evidence that all previous assessments had been made and levied by the officers of the plaintiff in error, as well as the contention that this amounted to a delegation by the Board of Directors of the power to make and levy these assessments, and, in effect, treats this power as one which was non-delegable by the Board of Directors.

The charter in question being a legislative charter, granted by the Legislature of the State of Connecticut, it is a public act or record of that State (Terry v. Merchants' and Planters' Bank, 66 Ga. 177, 178; Lassly v. Fountain, 4 Hening & Munford 146) and entitled to full faith and credit under Article IV, Section 1, of the Constitution of the United States. Therefore, the question whether or not, under the foregoing provision of this charter, the exclusive power to make and levy these assessments is vested in the Board of Directors, or whether such power is one which can be delegated to the officers, is one for this court to determine. In this connection, the Court

in Great Western Telegraph Company v. Purdy, 162 U. S. 330, 334, in holding that it was within its province to determine the effect of an order or judgment of the State of Illinois to which the plaintiff in error claimed the Supreme Court of Iowa had failed to give full faith and credit, says:

> "The plaintiff relied on the order of assessment, made by a court of the State of Illinois, as a judgment of that court, entitled to the **effect** of being conclusive evidence of the plaintiff's right to maintain this action against the defendant. The Supreme Court of the State of Iowa **denied** it that effect. The question whether that court thereby declined to give full faith and credit to a judicial proceeding of a court of another State, as required by the Constitution and laws of the United States, was necessarily involved in the decision.
>
> "This Court therefore has jurisdiction of the case, **but must judge for itself of the true nature and effect of the order relied on.** Armstrong v. Treasurer of Athens County, 16 Pet. 281, 285; Texas & Pacific Railway v. Southern Pacific Company, 137 U. S. 48; Grover & Baker Company v. Radcliffe, 137 U. S. 287; Carpenter v. Strange, 141 U. S. 87; Huntington v. Attrill, 146 U. S. 657, 666, 686."

The defendant in error also raises some question as to the time in which the claim was made that the Supreme Court of Missouri refused to give full faith

and credit to the charter of the plaintiff in error, the contention being that the same should have been raised in the trial court. It is unnecessary to consider this contention, however, because the ruling of the Supreme Court of Missouri that the exclusive power to make and levy this assessment resided in the Board of Directors and that the officers of the plaintiff in error had no power to make and levy the same, involves in and of itself a federal question as to whether full faith and credit has been given to such charter by the Supreme Court of Missouri, and that Court having passed on this question adversely to plaintiff in error it is immaterial when the question was first presented.

It has been repeatedly held by this Court that when a constitutional question is decided adversely by the State Court it will not consider the contention that the constitutional question was not raised at the earliest possible moment in the State Court or that the constitutional question had not been so raised as to have been properly the subject of review under the State practice (Boston Power Company v. Massachusetts, 97 U. S. 25; Scully v. American National Bank, 178 U. S. 289).

Furthermore, the plaintiff in error made the constitutional objection at the first opportunity. There was no issue made by the pleadings in this case that the assessment was illegal or void because it was

not made by the Board of Directors. It is true that in an instruction given by the trial court the jury were told, among other things, that the burden of proof was upon the plaintiff in error to show that the directors had levied this assessment, but, as it had been shown by the evidence that all previous assessments had been made and levied by the officers, this was equivalent to a delegation by the Board of Directors to the officers of the right to make and levy these assessments, and the plaintiff in error had therefore fulfilled the burden of proof imposed upon it by this instruction. It was not until the case reached the Supreme Court of Missouri that it was held that the exclusive power to make and levy these assessments resided in the Board of Directors, and could not be delegated to the officers of the plaintiff in error, whereupon the plaintiff in error, in its motion to transfer this cause from Division No. 1 of the Supreme Court of Missouri to the full court for determination (Section 4 of the Amendment of 1890 to Article VI of the Missouri Constitution providing that if a constitutional question is involved in the case the same shall, on the application of the losing party, be transferred to the entire court for consideration), assigned as one of the grounds of error that the divisional opinion failed to give full faith and credit to Article IV, Section 1, of the Con-

stitution of the United States for the reasons set forth herein (Rec., p. 360).

The proposition itself that only the Directors could make the levy is unsound. In all the cases cited by the Missouri Supreme Court to sustain its view either the certificate or the organic law of the Company or a statute provided expressly that the assessment should be made by the Board of Directors of the Association. There is no such provision in the contract here involved nor in the charter of the Company.

In the absence of such express provision in contract, charter or statute it has been uniformly held that this power may be delegated to any officers of the Company.

In Cooley's Briefs on Insurance (Vol. II, page 1027), it is said:

> "Delegation of power. If the by-laws of a mutual benefit insurance society provide that assessments for death losses **shall be levied by the Board of Directors,** the Board can not delegate such power to the president (Garretson v. Equitable Mut. Life & Endowment Ass'n, 93 Iowa 402, 61 N. W. 952). But where the articles of a company provided that the directors should control its affairs, and empowered them to enact by-laws and rules and to appoint from their number an executive committee who should supervise the business of the company and audit accounts and

provide for assessments, but was **silent as to who should make them, the directors had authority through a by-law, to empower the Executive Committee to make assessments** (Fee v. National Masonic Acc. Ass'n, 81 N. W. 483, 110 Iowa 271). So, where the constitution of a beneficial association provided that on certain fixed dates, or at such other dates as the Board of Directors might determine, an assessment should be made on the entire membership for such sums as the Executive Committee might deem sufficient, an assessment authorized by a resolution of the Board of Directors as to the date of making it, and by a resolution of the Executive Committee as to the amount and necessity, was **not void because the directors had delegated their power to make the assessment to the Executive Committee** (Miles v. Mut. Reserve Fund Life Ass'n, 84 N. W. 159, 108 Wis. 421). Where the by-laws of an association required all assessments to be made by the directors and provided that the chairman should approve all proofs of death, and, on receipt of a claim for benefits on the death of a member, for which notice, but no proofs, had been received, and **instructed the secretary, if the proofs were found correct, to issue notices of assessment, and the proofs were examined and the assessments made according** to directions, the assessment is valid and binding (Passenger Conductor's Life Ins. Co. v. Birnbaum, 116 Pa. 565, 11 Atl. 378)."

In Fee v. National Association, 110 Iowa 271, the articles of incorporation of the defendant Association provided, as here, that the affairs of the Association

be controlled by its Board of Directors and the Board of Directors enacted a by-law whereby an executive committee was empowered to make and levy assessments under its certificate. The Court said:

> "It is asserted that as the assessment was made by the **Executive Committee**, appointed by the **Board of Directors**, it is illegal, in that such body **can not delegate this authority. By-law 17** empowered the Executive Committee to levy assessments. Article IV of the articles of incorporation provided for the election of nine directors, each holding for three years, to control its affairs, and who shall have power to enact such by-laws and rules as they may deem for the best interests of the association, and who shall appoint from their number an executive committee of three members, who shall have immediate supervision of the business of the association, and shall examine and audit all claims, bills, accounts and reports. While **Article VIII relates to assessments, none provide who shall make them.** The **principal business** of the association was to **make assessments** and distribute them, when collected, to the parties entitled thereto. The immediate supervision of this business by an execuitve committee is expressly authorized and the power to enact by-laws for the best interests of the society given. We think, under this article, the Board of Directors was authorized to adopt by-law 17, under which the Executive Committee made the assessment. Garretson v. Association, 93 Ia. 402, relied on by appellant, is not in point.

> There, **the articles of incorporation required the** assessment to be made by the **Board of Directors**, and it was held that in such a case the president and secretary might not do so."

In Conductor's Association v. Birnbaum, 116 Pa. St. 565, the board of directors of the defendant association ordered that when proofs of death were received, the secretary of the association should make an assessment and send notice thereof to the member. An assessment was made by the secretary, which the assured failed to pay. The assured having subsequently died, the beneficiary brought suit on the certificate, claiming that the assessment which the insured had failed to pay was illegal and void because it had not been made and levied by the Board of Directors. The trial court held that the assessment was illegal and void because it was not actually made and levied by the Board of Directors of the defendant association, but in reversing the ruling of the trial court in this regard the Supreme Court of Iowa says:

> "**We think the Court below erred in instructing the jury that assessment No. 117 upon the death of Skinner was illegal.** It is conceded that if Birnbaum was in default, his widow has no claim. That he did not pay assessment No. 117 is not disputed. It is said, however, that it was illegally assessed. That it was done in en-

> tire **good faith** can hardly be questioned. That it was done in **such manner as to save delay** and give the deceased member's family their money as early as practicable seems equally clear. **The mode of making the assessment was the usual mode**; it was done by a mutual association of which Birnbaum was a member, and it was admittedly a just and proper assessment, **one which the Company was bound in good faith to make.**"

The making and levying of the assessment in question was in the nature of a ministerial act and not a highly discretionary act, as held by the Supreme Court of Missouri, and involved very little, if any discretion. The assessments are fixed and determinable by the table of rates in the certificate and the amount of the unassessed for death losses outstanding at the time the assessment was levied. The only discretion required in making and levying these assessments is in the determination of the amount which the Company shall allow for the failure of certain members to pay such assessment, and this involves very little, if any, discretion, as the amount of such allowance was based on the number of members that had failed to pay the preceding assessment. Furthermore, if the allowance actually made for discontinuance of membership was greater than that actually experienced in the assessment in question, the difference remained in the Mortuary Fund and

was applied to the payment of death losses (Rec., pp. 203, 204); thereby necessarily resulting in a decrease in the amount of subsequent assessments to be levied against the members.

We submit that the holding of the Supreme Court of Missouri that the making and levying of these assessments required the exercise of high discretion, is without merit, but even if so, it was a delegable power; and that it was delegated in this case is established by the fact that all the assessments for many years preceding the assessment in question were made and levied by the officers and not by the board of directors (Res., pp. 255, 262); (Martin v. West, 110 U. S. 7; McCormick v. Unity Co., 140 Ill. App. 159 [aff. 209 Ill. 306]).

But the question is foreclosed by the Dresser decree. Connecticut was the home of the corporation, and it was for the Courts of that State to construe its charter powers. It was taken for granted by counsel upon both sides that, so far as this question is concerned the assessments were all valid. That the assessments were the acts of the Company inhered in the judgment. From beginning to end they are spoken of as such in the decree. It is said, for example (Rec., p. 40), that "the Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate", and further, on the same page, that

"the Hartford Life Insurance Company did not levy assessments unnecessary in amount or number". Now, to impeach what was thus approved is certainly to deny full faith and credit to the Dresser decree.

III.

The Statute of Missouri Imposing Damages and Attorney's Fees Against an Insurance Company for Vexatious Refusal to Pay a Policy, as Construed by the Supreme Court of the State, Violates the Fourteenth Article of the Amendments to the Federal Constitution in That It Deprives the Company of Its Property Without Due Process of Law.

The statute, Sec. 7068, R. S. Mo. 1909, is as follows:

> "In any action against any insurance company to recover the amount of any loss under a policy of fire, life, marine or other insurance, if it appear from the evidence that such company has vexatiously refused to pay such loss, the Court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not exceeding ten per cent on the amount of the loss and a reasonable attorney's fee; and the Court shall enter judgment for the aggregate sum found in the verdict."

We recognize that similar statutes have been up-

held by this Court, but not as construed by the Supreme Court of Missouri.

In Keller v. Home Life Ins. Co., 198 Mo. 440, the Court said:

> "The statute will not admit of the construction contended for by counsel for plaintiff in error that before damages are allowed it must be expressly proved by the plaintiff that the delay or refusal was vexatious."

What this means is shown by the case of Stix v. Travelers Ins. Co., 175 Mo. Appeals 171, wherein the Court said:

> "The fact that defendant declined to compensate the loss without litigation is of itself evidence to prove the delay thereby to be vexatious. Such is the established rule of decision."

In the case of Supreme Ruling, Etc., v. Snyder, 227 U. S. 497, this Court, dealing with a similar statute, said:

> "The act does not make the mere refusal to pay sufficient evidence of bad faith, so as to justify the added recovery; it requires that the bad faith be shown and that the consequent additional loss be shown."

In the present case there was no evidence offered to show bad faith by the defendant. It declined to

pay the policy because the assessments under it had not been met. The trial was had before the Ibs case was decided by this Court. The defense made and the issues presented were essentially the same as in the Ibs case and which there was held to be good. The Dresser decree, pleaded in defense, but rejected when offered in evidence, could in the view of the Missouri Court, be taken by the jury as sufficient evidence upon which to base the penalty prescribed by the statute. The effect of the statute as construed by the Supreme Court of Missouri is to punish any defense whatever.

We submit that there are well-grounded constitutional questions properly before this Court for determination and under the previous decisions of this Court the plaintiff in error is entitled to maintain the writ and the motion to dismiss or affirm should be denied.

In Green v. Van Buskirk, 7 Wall. 139, it is said:

> "The question raised on the motion to dismiss was, whether the Supreme Court of New York, in this case had decided against a right which Green claimed under the Constitution and an Act of Congress. If it had, then this Court had jurisdiction to entertain the writ of error, otherwise not. It was insisted on the one side and denied on the other, that the faith and credit which the judicial proceedings in the courts of the State of Illinois had by law and usage in

that State were denied to them by the Supreme Court of New York, in the decision which was rendered.

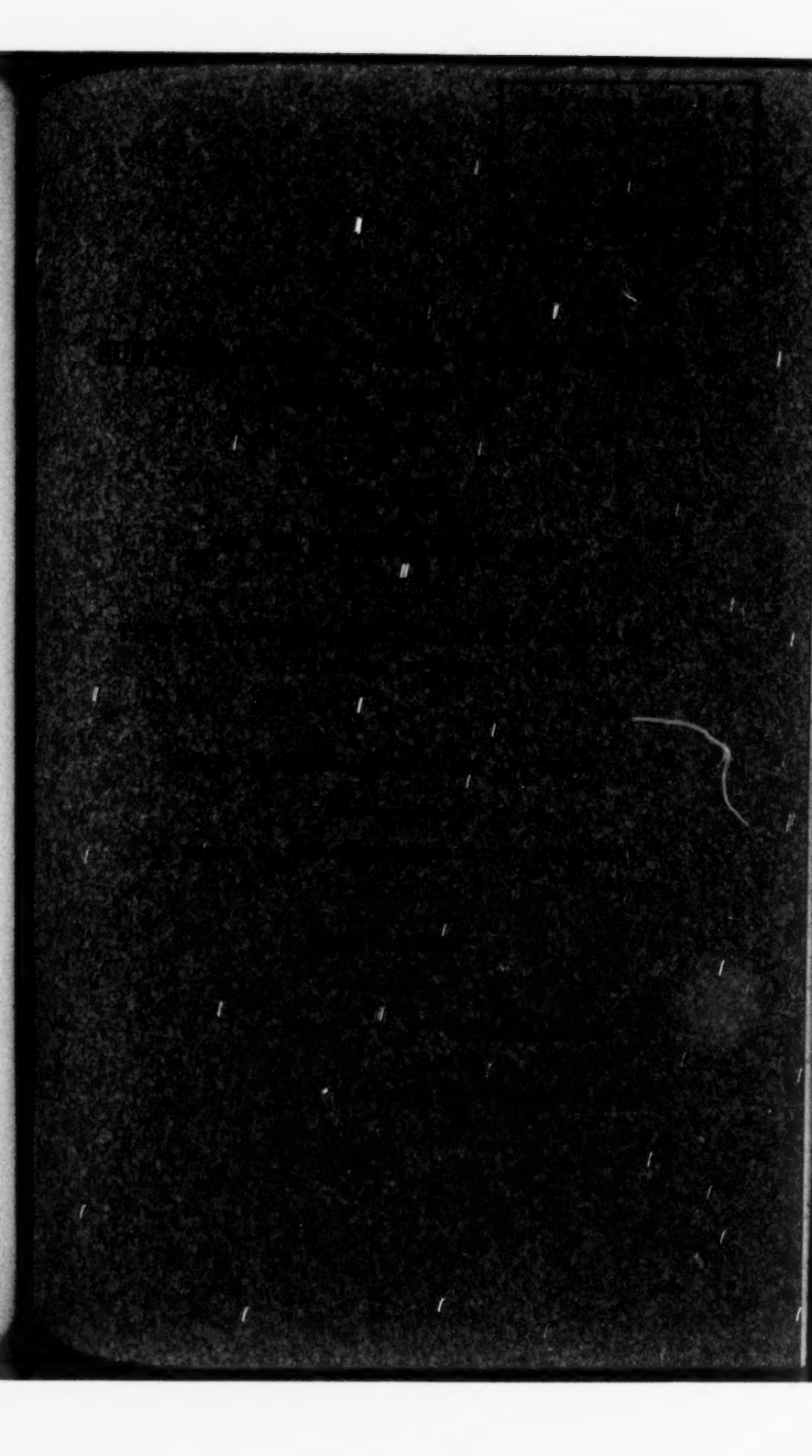
"Whether this was so or not could only be properly considered **when the case came to be heard on its merits**; but this Court, in denial of the motion to dismiss, held that the Supreme Court of New York necessarily decided **what** effect the attachment proceedings in Illinois had by the law and usage in that State, and as it decided **against the effect which Green claimed for them**, this Court had jurisdiction under the clause of the Constitution which declares 'that full faith and credit shall be given in each State to the public acts, records and judicial proceedings the same faith and credit in other States that they have in the State in which they were rendered.'"

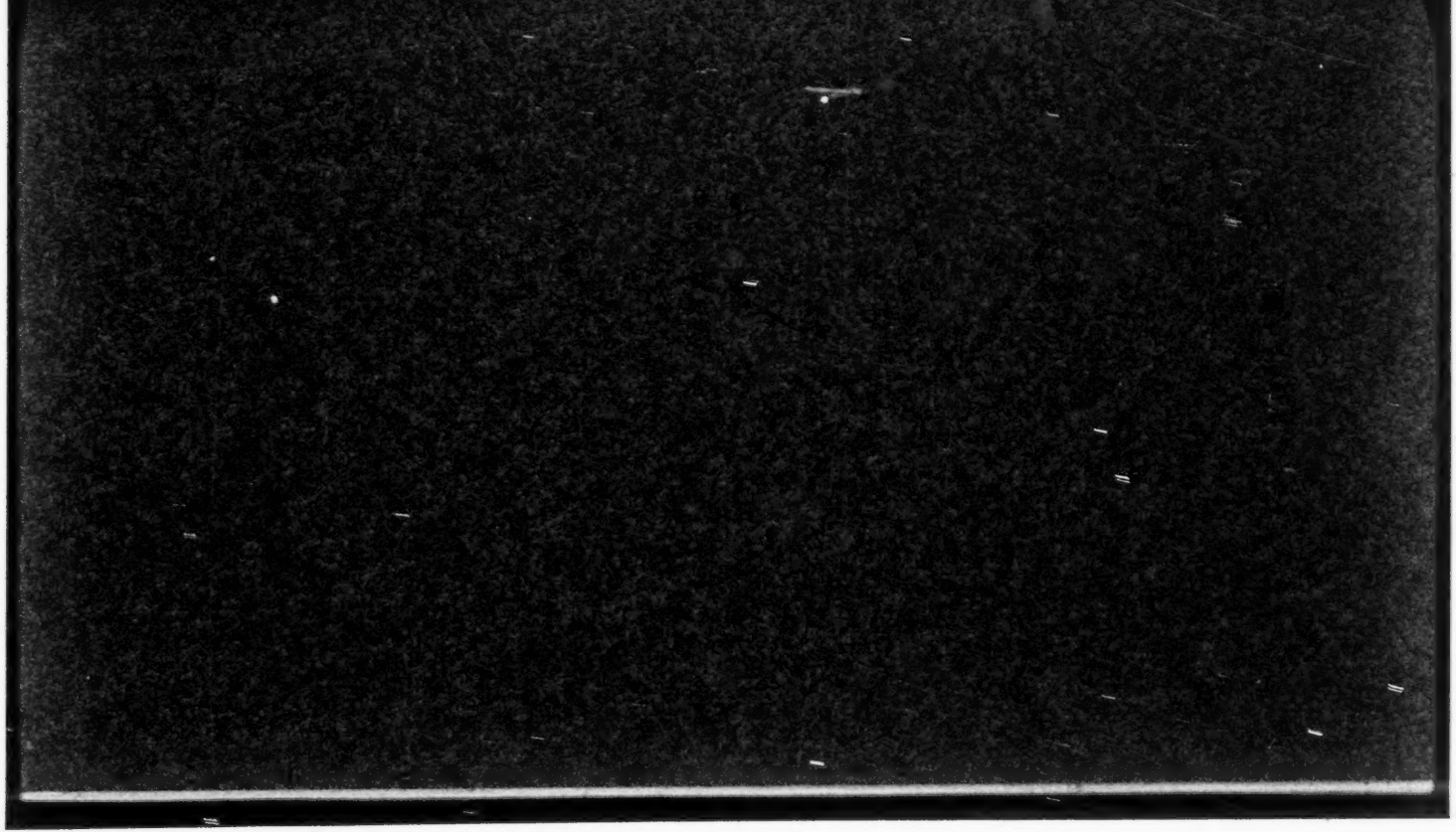
There are other matters in the opinion rendered by the Supreme Court of Missouri which call for consideration when the case is heard on its merits. The scope of the present discussion is to show that the case should be so heard, and this we believe has been done.

Respectfully submitted,

F. W. LEHMANN,

JAMES C. JONES.





INDEX.

	Page
The States court's holding as to the charter provision is not an independent question	1
Supreme Council *vs.* Green, 237 U. S.	2
Terry *vs.* Bank, 66 Ga., 177	3
Lassley *vs.* Fontaine, 4 H. & M., 146	3
Terre Haute, etc., Ry. Co. *vs.* Indiana, 194 U. S., 579	5
Leathe *vs.* Thomas, 207 U. S., 99	7
Hartford Life *vs.* Ibs, 237 U. S., 662	7
The fallacies of the State court's opinion	10
The inclusion of taxes paid does not invalid the assessment	11
The penalty statute	13

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 253.

(No. 633, OCTOBER TERM, 1916.)

THE HARTFORD LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

vs.

ROSA BARBER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF MISSOURI.

REPLY BRIEF.

I.

The holding by the State court that under the charter provision that all the affairs of said corporation shall be *managed and controlled* by "the board of directors, the executive officers were without power to levy these assessments otherwise than under their direction, to be shown by

its records," is not an independent question of general law determinative of this case without regard to the constitutional questions relied on.

> "All the rights asserted under the assignments of error come to *one contention*, that a violation of the full faith and credit clause of the Constitution of the United States resulted from refusing to hold that the rights of the parties were to be determined by the Massachusetts law and in further refusing to give due effect to the decree rendered in [Connecticut] concerning the subject of controversy."
>
> Supreme C. *vs.* Green, 237 U. S., 531.

Barber's right to participate in, and the company's right to retain for the payment of death losses, *this very fund* was in judgment in the Dresser decree, which was rendered March 23, 1910. The mortuary fund then on hand and there adjudicated was accumulated in part from the very assessment which Barber refused to pay, levied January 29, 1910, and payable, by him, up to March 5, 1910. The Dresser decree expressly holds that the assessments made by which this Mortuary Fund was accumulated were necessary and lawful and it was adjudged and decreed that "the Insurance Company is reasonably entitled to hold the same." Barber as a party, by representation, was deemed the claimed right to a distribution of the Mortuary Fund in the Dresser case. He paid no further assessments. In this suit by his representative, his widow, the Missouri court holds that as to Barber the Insurance Company is not entitled to hold the Mortuary Fund, because it says the assessments were not levied by proper official; thus placing a condition or limitation on the Dresser decree and thereby failing to give it full faith and credit. This proposition is inseparably involved in the question what is the full faith and credit to be accorded to the Dresser decree?

Moreover, *the charter* of the company, granted by Act of the Legislature of the State of Connecticut is a public

act and record of a sister State, which must be given "full faith and credit" under Article IV, section 1 of the Constitution.

> "The first question made for our determination is, whether the suit was properly dismissed. *The charter* of a bank is a *public act,* and the courts will take judicial notice thereof, as was held by this court in Davis *vs.* Bank, 31 Ga., 69."
>
> Terry *vs.* Bank, 66 Ga., 177.

In Lassley *vs.* Fontaine, 4 Hening & Munford, 146, the Supreme Court of Appeals of Virginia, in holding that a patent grant of lands by the State of North Carolina was a public act within the meaning of the Fourth Amendment to the Constitution of the United States, says:

> "By the 4th Article of the Constitution of the United States 'full faith and credit shall be given, in each State, to the *public acts, records and judicial proceedings* of every other State.' A patent under the hand of the Governor and seal of the State *is one of those public acts to which full faith and credit must be given in every court of the Union,* being a record of the highest nature. If the courts of this State were to undertake to pronounce the public act of a sister State, thus solemnly authenticated, void, in consequence of any *misfeasance or omission of duty,* whose faithful discharge of their duty the patent supposes, it might lead to consequences far beyond the reach of my foresight. If the patent be void, or voidable, for the reasons suggested in the bill of exceptions, I conceive it to be competent only to the State of North Carolina, and its courts, to pronounce it void. In what manner a patent may be avoided in that State, whether by *scire facias* issuing out of a court of chancery, or otherwise, we are not informed. But no evidence, not of equal dignity and the patent itself, can I presume, be admitted in this State, *to annul the operation of a grant made in due form by the proper authorities of any other State.*"

As a sister State may not annul, neither may it *limit* the operative effect of either a decree or a charter of a sister State.

This charter provides that all the affairs of the plaintiff in error shall be "managed and controlled" by its board of directors. Under this charter provision the Supreme Court of Missouri holds that the power to levy the assessment in question was vested exclusively in the board of directors, as such, and that the officers of the plaintiff in error were without power to levy assessments. The plaintiff in error asserts that this is an erroneous construction of its charter, and by such erroneous construction the State court has failed to give full faith and credit to a public act and record of a sister State, as required by Art. IV, sec. 1 of the Constitution. The plaintiff in error asserts that as this charter did not expressly require its board of directors to *make and levy* assessments, but merely to "manage and control the affairs" of the company, the power to make and levy the assessment was delegable by the board to the usual officers of the company, and that this duty was so delegated to and exercised by such officers.

In Royal Arcanum *vs.* Queen, 237 U. S., 531, a judgment of the New York court was reversed by this court because the State court failed to give full faith and credit to the Massachusetts charter of the plaintiff in error. In this connection it is said:

> "The controlling effect of the law of Massachusetts being thus established and the error committed by the court below in declining to give effect to that law and in thereby disregarding the demands of the full faith and credit clause being determined, we come to consider whether the increase of assessment which was complained of *was within the powers granted by the Massachusetts charter* or conflicted with the laws of that State. * * *
>
> "Coming then to give full faith and credit *to the Massachusetts charter* of the corporation and to the

laws of that State to determine the *powers of the corporation* and the rights and duties of its members, there is no room to doubt that the amendment to the by-laws was valid if we accept, as we do, *the significance of the charter, and of the Massachusetts law applicable to it*, as announced by the Supreme Judicial Court of Massachusetts in the Reynolds case."

(See also Terre Haute, etc., Ry. Co. *vs.* Indiana, 194 U. S., 579.)

We submit therefore that whether the State court has placed the proper construction upon this charter provision is for this court to determine in order to ascertain whether that court has given full faith and credit to this charter as required by Art. IV., Sec. 1, of the Constitution.

It would seem that the question of the power of the officers to make and levy these assessments has been foreclosed by the Dresser decree. Connecticut being the home of the corporation, the courts of that State had the exclusive power to determine what were the officers' powers under the charter provisions. In the Dresser decree the Connecticut court expressly holds that the assessments levied were the valid acts of the company, which is an implied, if not an express, recognition of the right of the officers to levy these assessments. Therefore to hold, as does the Missouri court, that this act of the officers was beyond their power under the charter is a holding contrary to the recognized powers of such officers under the Dresser decree. Connecticut having determined that these assessments were properly levied by the officers of the company, the holding by the Supreme Court of Missouri that such officers had no such power is a denial of the full faith and credit to which this charter (construed in accordance with the laws of Connecticut and the decree of the Connecticut court) is entitled under the Federal Constitution.

(Royal Arcanum *vs.* Green, 237 U. S., 531.)

We submit therefore that this point, far from being an independent question determinable by general laws and decisive of the case, is necessarily involved in the main question (*i. e.*, the full faith and credit to be given to the Dresser decree), and that the point itself raises the further Federal question; *i. e.*, the effect to be given a public act and record (*i. e.*, the charter) of a sister State, and therefore is for consideration by this court and that "this court must judge for itself the true nature and effect" of the charter provision relied on.

(Armstrong *vs.* Treasurer, 16 Pet., 281, 285.)

Coming now to the consideration of the point which is, briefly, that an assessment is no assessment unless levied by the Board of Directors as a board and evidenced by a board record, we submit that the point is wholly without merit.

The charter requirement that the directors shall "manage and control all the affairs" of the corporation does not mean that the directors shall as such themselves *do* all the affairs. To state this proposition is to refute it, for this would require the directors as such to attend to every detail of the company's business which would not be "managing and controlling" its affairs.

Directing one to "manage and control" naturally, and almost necessarily, presuppose that another shall *do* what the one is directed to *manage and control.*

The court construes the requirement to "manage and control" all the affairs into a mandate that the directors shall "actually levy all assessments and make a record thereof." The difference between controlling provisions in the latter terms and the former language (as shown by decided cases) is pointed out on pages 24 *et seq.* of our main brief.

This charter provision is the usual like provision in charters of banks and business corporations. No one would contend, we think, that if one gave a note or other obligation

to a bank or business concern, payable in whole, or in installments, on demand or on call, that there could be no valid demand or call except one made by the Board of Directors as such evidenced by a board record, simply because the corporation's charter required the directors to "manage and control" its affairs, yet there is no distinction between the supposed case and this case.

We submit that the point now under discussion is so shadowy, unreal, and "palpably unfounded," that (even if it did not itself involve a Federal question) it should be disregarded, under the doctrine suggested in Leathe *vs.* Thomas, 207 U. S., l. c. 99, where the court says:

> "Of course, there might be cases where, although the decision put forward other reasons, it would be apparent that a Federal question was involved whether mentioned or not. It may be imagined, for the sake of argument, that it might appear that a State court, even if ostensibly deciding the Federal question in favor of the plaintiff in error, *really must have been against him upon it, and was seeking to evade the jurisdiction of this court.* If the ground of decision did not appear and that which did not involve a Federal question was *so palpably unfounded* that it could not be presumed to have been entertained, it may be that this court would take jurisdiction. Johnson *vs.* Risk, 137 U. S., 300. 307."

Before the decision by this court in the Ibs case recoveries were permitted by Missouri in these cases, and on what we think precisely similar records, recoveries are still permitted in that State regardless of the Ibs case.

In the case of Hartford Life *vs.* Johnson, now before this court on application for *certiorari*, a recovery was had and upheld by the Missouri courts though the member refused to pay assessments for 5 years prior to his death.

No contention is made in any of these cases that the assessments levied have not been used to defray death losses, or that the money in the mortuary fund is not used exclu-

sively for the purposes for which it is collected and maintained— no contention that the directors would not or should not have done just what the officers did—but only this: that the assessment was levied by one set of officers when it should have been levied by another set or that the fund on hand (concededly *used* to pay death losses) was greater than it need be, in somebody's opinion.

With what result? That *those who do not pay assessments* are adjudged to have a legal right to the *money of those who do pay assessments.*

Referring to the Dresser judgment and this court's treatment of it, the Missouri court says: (Rec. 341.)

> "By this judgment the court attempted to make some *radical changes in the contract* here sued on and *this attempt,* applicable to this case in some respects which we shall notice, has received *the endorsement of the Supreme Court of the United States* in Hartford Life Insurance Company *vs.* Ibs. 237 U. S., 662."

The opinion then proceeds to give an *effect* to the Dresser decree. Wholly at variance with the effect given to that decree by this court (*i. e.* by including as money on hand on Dec. 31 1909, the sum of $320,000 which was not payable until January 29, 1910, and was not paid until Mar. 1 to 15, 1910), and then proceeds to fortify this demonstrably erroneous theory by a technical construction of the company's charter for which there is no logical basis and which is contrary to any similar construction ever given to like language.

We think it is manifest from the State court's opinion that the opinion of this court in the Ibs case did not receive its approval and that the writer of the Missouri opinion either did not appreciate that he was *controlled thereby* or did not appreciate the import thereof.

The Ibs case decided that

> "if the mortuary fund had been thus *finally appropriated to the payment of claims*—without the right of reimbursement from the next assessment—the fund would have been *permanently destroyed* and the company would have been deprived of the right *to maintain* and use it as a source from which thereafter to make prompt settlement. *That the company had such right was expressly adjudged in the Connecticut decree.* To exclude it from evidence and (or) to decline to enforce its provisions was to deny it the full faith and credit to which it was entitled under the provisions of Art. IV, Sec. 1 of the Constitution of the United States."

In this case the trial court excluded the decree and the Supreme Court declined to enforce its provisions.

> "Again, the Ibs case decided that it would be destructive of their (the members') *mutual rights* in the plan of mutual insurance to *use the Mortuary Fund* in one way for claims of members residing in one State and to use it in another way as to claims of members residing in another State. * * * Manifestly the question as to the *ownership* and *proper administration* of the fund could not be left *at large* for *collateral decision* in every suit on certificates held by *those who failed to pay the assessments.*"

Though the Connecticut court had decreed that any excess in the Mortuary Fund over one quarterly assessment ($300,000) "should be *distributed* to the certificate-holders in diminution of assessments *by crediting and applying such excess on the next succeeding assessment*" (Rec., 44), the State court, finding itself unable to so credit Barber on his next assessment, because he paid no next assessment, destroys the mutuality of interest of members in the fund by giving Barber $2,000 of it plus some $1,000 or more as for penalties and attorneys' fees, thus treating the question, contrary to the holding in the Ibs case, as "one at large for collateral decision in every suit" in any State.

"An assessment which was one thing in one State and another in another, and *a fund which was distributed by one rule in one State and by a different rule somewhere else,* would in practical effect amount to no assessment and *no substantial sum* to be distributed" (Sup. Council *vs.* Green, 237 U. S., 531).

FALLACIES DEMONSTRATED.

I.

Lincoln gave long evenings of his life to the study of Euclid in order to comprehend the oft-used and oftener-abused word "demonstration."

Perhaps the writer should hie him to his Euclid, e'en as Lincoln did.

Let us see.

(*a*) It is conceded that on December 31, 1909, there was in the Mortuary Fund $74,000 *actual money in hand.*

This and nothing more (excluding, of course, the $19,000 then paid into the dividend account, which never went into the Mortuary Fund—an erroneous assumption by the State court, but negligible).

(*b*) By no process can the State court find $300,000 in the Mortuary Fund (the authorized maximum under the Dresser decree) *except by including the* $322,000 which the company then determined to *assess for,* but which assessment was not levied until 30 days later, January 29, 1910.

(*c*) This assessment was *not called* (*i. e.,* notices of it were not sent out) *until January* 29, 1910—thirty days after December 31, 1909.

Question: How can money not assessed or demanded until January 29, 1910 (and therefore not yet paid) constitute

any part of the "balance in the Mortuary Fund" on December 31, 1909?

Yet the Supreme Court, in order to find $300,000 in the Mortuary Fund on December 31, 1909, includes $322,000 which was not levied or demanded (and hence not paid) until 30 days later.

(*d*) The assessment of $322,000, determined upon December 31, 1909, and called January 29, 1910, was not fully or substantially paid until March 1-15, 1910.

Question: How can money not paid until March, 1910, constitute any part of the "balance in the Mortuary Fund" on December 31, 1909?

The fallacy, therefore, is this: In order to find that the company had a balance *in* the Mortuary Fund in excess of the $300,000 limit of the Dresser decree, the court includes $322,000 *not in* the Mortuary Fund. It treats as cash *paid* into the fund in the *past* sums *payable* in the *future*.

Thus $74,000 *in* the fund being increased by $322,000 *not in* the fund becomes $396,000 *in the fund*.

We submit that this may be all right in alchemy or legerdemain, but that it will not do in law or logic.

II.

Finding $322,000 *not in* the fund *to be in* the fund, the court then says: Because *it is in* the fund the limit of $300,000 is exceeded and therefore the assessment of $322,000 is invalid and the company *cannot collect* that which it is *already assumed to have—i. e.*, the $322,000 yet to be assessed for.

III.

Follow out the State court's logic and see where we land. The assessment, $322,000 levied January 29, 1910, being

invalid, it could not be collected; so three months later this sum had to be reassessed, plus $300,000 to cover death claims accumulated *ad interim*—a total of $322,000.

Now the $74,000 is exhausted. The balance in the Mortuary Fund is zero.

Assessment levied, $622,000—but, presto; change, on determining to assess for $622,000 the court assumes that $622,000 has been collected and is in the Mortuary Fund and as this exceeds the $300,000 limit the call is again invalid and cannot be collected.

"And so on *ad infinitum*."

"In the last analysis" the only power left to the company by the State court is the *power to levy invalid assessments that cannot be collected.*

IV.

The further point is made that the assessment included taxes paid the State of Missouri, and that as these taxes were illegally exacted by the insurance commissioner the assessment is invalid because of their inclusion.

This question is not dealt with in the opinion of the State court.

It is now suggested in this case for the first time.

No question but that the taxes were included pursuant to policy provision No. 2 (Rec. 57).

No question but that the company in turn paid all taxes collected on previous assessments to the State of Missouri.

The claim is that because the State officials illegally exacted an unauthorized tax assessment the assessment which included such illegal exaction is invalid.

The conclusion is denied—a question of law.

One premise also is denied—*i. e.*, that the tax was illegally levied. The Waddell case relied on (138 Mo., 628) only decides that assessment companies, licensed as such under the assessment laws of Missouri, are exempt from the taxes

imposed *because of an express statutory exemption found in the assessment law.* The plaintiff in error was not admitted to Missouri or licensed under this law and could not claim the benefit of this statutory exemption.

The Penalty Statute.

The constitutional questions concerning the penalty statute were raised—

(*a*)—In the answer (Rec., 12);

(*b*)—In the motion for new trial (objections 19 to 24, Rec. 320, attacking instruction No. 2, which authorized the imposition of attorney's fees and damages);

(*c*)—In the assignment of errors in the appellate and Supreme court;

(*d*)—In the opinion of the Supreme Court the right claimed is expressly considered and denied (Rec., 340).

Respectfully submitted,

F. W. LEHMANN,
JAMES C. JONES,
For Plaintiff in Error.

FILED
NOV 5 1917
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 253.

(No. 633, October Term, 1916.)

THE HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,
vs.
ROSA BARBER,
Defendant in Error.

In Error to the Supreme Court of Missouri.

STATEMENT, BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

CHARLES E. MORROW,
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INDEX.

Page

Statement 1-8

Points and authorities..... 9-13

Argument 14-30

List of Authorities Cited by Defendant in Error.

Acock v. Acock, 57 Mo. 155.....28

Bacon on Benefit Soc. & Ins., Sec. 377..... 10

Bollin v. Nebraska, 176 U. S. 83..... 28

Brown v. Ry. Passenger Assurance Co., 45 Mo., *l. c.* 227..... 26

Curtis v. Curtis, 54 Mo. 352..... 28

Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559..12, 27

Castillo v. McConnico, 168 U. S. 674, 679..... 9

Citizens Savings Bank v. Owensboro, 173 U. S. 636 28

Dower v. Rogers, 151 U. S. 658.....12, 27, 30

Eustis v. Bolles, 150 U. S. 361..... 9

El Paso & S. W. R. Co. v. Eichel, 226 U. S. 590..12, 27

Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308 .....11, 25

Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301.11, 25

Farmers Milling Co. v. Ins. Co., 127 Ia. 314..... 10

Farmers Mutual Ins. Co. v. Chase, 56 N. H. 341.. 10

Fraternal Mystic Circle v. Snyder, 227 U. S. 497.11, 25

Garretson v. Equitable, Etc., Assn., 93 Ia. 403.... 10

Iowa Life Ins. Co. v. Lewis, 187 U. S. 335.....11, 25

Johnson v. New York Life Ins. Co., 187 U. S. 491 .....12, 27
Keller v. Home Life Ins. Co., 198 Mo. 440...11, 25, 26
Lancaster v. Washington Life Ins. Co., 62 Mo. 121 28
Lohmeyer v. Cordage Co., 214 Mo. 685.....12, 28
Murdock v. Memphis, 20 Wall. 590.....9, 12, 25
Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123 .....11, 12, 25, 27
Mutual Life Ins. Co. v. McGrew, 188 U. S. 291...12, 28
McCoy v. Farmer, 65 Mo. 244..... 28
Masonic Aid Assn. v. Waddell, 138 Mo. 628.....11, 24
Nilblack on Benefit Soc., Sec. 252..... 10
Revised Statutes of Mo. 1909, Sec. 2025..... 28
Stix v. Travelers Ins. Co., 175 Mo. App. 171..... 26
Underwood v. Legion of Honor, 66 Ia. 134..... 10
Williamson v. Liverpool, Etc., Ins. Co., 141 Fed. 54 .....11, 25
Winona & St. Peter R. R. Co. v. Plainview, 143 U. S. 390.....
Westerman v. Supreme Lodge K. of P., 196 Mo. 670 .....11, 24
Walter A. Wood Co. v. Skinner, 139 U. S. 193... 25
Winona, Etc., Land Co. v. Minnesota, 159 U. S. 540 28

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STATEMENT, BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

STATEMENT.

This case is not a replica of Hartford Life Insurance Co. v. Ibs, 237 U. S. 662, as stated by plaintiff in error. The issues are different, the facts are different, and the grounds of decision are different. In this case the Supreme Court of Missouri gave full faith and credit to the decree of the Court of Con-

necticut in the Dresser case, and held the assessment to be excessive and void under the terms of that decree. But the Supreme Court of Missouri also decided the merits of this case against plaintiff in error on another ground, namely, that the assessment, the failure to pay which a forfeiture was claimed by the insurance company, was void for the reason that it was not made by any one who had authority to make it, and no record of the same was made or kept; that the charter placed the powers of the corporation in the board of directors, and that the assessment in question was made by the president, secretary and probably the vice-president without authority.

This is a suit upon a policy of life insurance, issued by defendant upon the life of Frank Barber. The plaintiff is his widow. The defendant is an "old line" standard level premium life insurance company. The stock of the corporation is owned by individuals for profit. The policy sued upon is an assessment policy issued on September 4, 1893, for $2,000.00. This policy was one of a series of something over 100,000 issued by defendant about that date. The plan was to have each policy holder contribute $10.00 per thousand to a safety fund, and this fund was to be loaned out at interest, and the earnings therefrom, it was represented, would enable the company to carry the insurance at stated assessments to be levied quarterly, but the company reserved the right to collect

additional assessments in the event the interest from the safety fund with the other assessments, proved insufficient to pay death losses. Payments of dues and assessments were regularly made by Frank Barber from the date of the policy up to what is called Assessment 126, which is said to have been levied January 5th or 6th, 1910, as of the date of December 31, 1909. Notices of this assessment, it is claimed, were sent out on January 29, 1910, and the assessment was due March 1, 1910, and that payments would not be received later than March 5, 1910 (R. 139). This particular assessment was made, as shown on its face, to meet 119 death losses, and a list of the names of the persons who had died, and the amount of the policies of insurance upon their lives accompanied the notice of assessment (R. 139 and Ex. N., bet. pp. 130, 131). It is admitted that Frank Barber died on June 5, 1910, and it is claimed he failed to pay Assessment 126 in the sum of $13.09 for Mortality Call, and $1.50 dues, making a total of $14.59.

The defendant applied upon the payment of dues $1.40 as dividends. It is provided in the policy that the dividends upon the safety fund should be applied to the payment of dues, and the dividends were sufficient to cover the dues except 10 cents.

tradicted that the value of the machines in question

Accompanying the notice of Assessment 126 was a printed list giving the names of 119 persons who

had died and the amount of their claims, making a total of $322,378.48. Mr. Lawrence, vice-president of the company, testified: "We did not take into account conditions existing on January 29th, but conditions as existing on December 31st, and had to, because it took a month to make the calculation. We did take into account the conditions of the various funds of the company on December 31st" (Rec., p. 257).

He also testified:

> "Q. In this particular instance, assessment 126, as a matter of fact, you did send out notices for money not as an assessment to pay death claims, but to replenish your funds and also to pay death claims?
>
> A. No; we levied an assessment for certain death claims, the proceeds of that assessment to go into the mortuary fund for the payment of death claims" (Rec., p. 237).

This witness further testified that Assessment 126 was made by the president and secretary and probably one of the vice-presidents of the company about the 5th or 6th of January, 1910, and that no record of the same was made or kept (Rec., p. 254).

The charter of the company was also identified by this witness and it was offered in evidence, and it is provided therein that "**all the affairs of said corporation shall be managed and controlled by a board of not less than seven directors**" (Rec., p. 70).

This witness further testified that on December 31st, 1909, the date as of which the alleged Assessment 126 was made, that the company had in its mortuary fund subject to the payment of death claims $74,938.92 (Rec., p. 232), and also $19,447.39 interest on safety fund which was available to reduce the amount of the assessment as dividend (Rec., p. 235), and that on December 31st, 1909, all of the 119 death claims but fifteen had been paid; that $281,378.48 of said death claims were paid before December 31st, 1909, and that $41,000.00 of said 119 death claims were paid after December 31st, 1909, and that the company had in the mortuary fund on December 31st, 1909, with which to pay the $41,000.00 of death claims of said call so remaining unpaid at that date the sum of $94,368.31, and that said funds were amply sufficient to pay the same, if the company had deemed it advisable to so do (Rec., p. 233). The list of death losses accompanying the notice of assessment were taken up one by one, and this witness testified from the record as to the date of actual payment of each claim (Rec., pp. 220-231). It was further shown that $7,000.00 of said fifteen unpaid death claims was actually paid between December 31st, 1909, the date of the assessment, and January 29th, 1910, the date of the notice of the alleged assessment, so that when notice of Assessment No. 126 is claimed to have in fact been sent to as-

sured all of the death losses for which the same is claimed to have been levied had been paid excepting $34,000.00.

The sworn statement of the defendant company, made on the 14th day of February, 1910, to the Insurance Department of the State of Missouri, stating the condition of the affairs of the company on December 31, 1909, the date as of which the assessment in question was made, shows that there were net premiums in course of collection, safety fund department, $185,000.00; accrued interest, safety fund department, $13,311.33. In addition, this report also showed mortuary funds, men's division, $74,772.25; net income, safety fund, $44,079.56; safety fund deposits, $397.50 (Rec., pp. 329-332).

Mr. Lawrence also testified that the company had been giving some of its policy holders in the men's division of the safety fund department an extension of time for payment of their dues and assessments. And for that purpose it was necessary to retain in the hands of the company $426.69 out of the interest fund in order to apportion this as dividends to these policy holders when they paid their assessments and dues (Rec., p. 161).

Seventy cents per thousand was the amount of the dividend to be apportioned (Rec., p. 161). By retaining $426.69 it will be seen that the defendant had extended the time of payment of dues and assess-

ments on more than $609,000.00 of insurance. This will explain the item in the annual statement of "$185,000.00 premiums in course of collection on December 31st, 1909".

It is provided in the Dresser decree that "it is proper and reasonable that the company should hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the company hold more than the amount of one average quarterly assessment for the previous year" and it is admitted in this case that the average amount of a quarterly assessment for the previous year was about $300,000.00.

Plaintiff in error, in its brief, claims that the evidence shows that all previous assessments were levied by the president and secretary of the company, and cites pages 255, 262 of the record. In this the plaintiff in error is mistaken. The evidence of the secretary would indicate that this was done all the time he was secretary from 1907 as long as President Keeney was connected with the company (R. 262). It is not shown how long President Keeney was connected with the company, but the assessment in question was made on the 5th or 6th of January, 1910. However, it is not shown that Frank Barber had any knowledge whatever that the president and secretary of the company were usurping the power and author-

ity of the board of directors and making these assessments.

The evidence shows that in order to determine the amount of each particular assessment that it was necessary to take into consideration the funds on hand and also the funds, if any, which would come into the hands of the company in the near future by reason of interest or dues, the time of which had been extended as well as the experience of the company as to lapses, etc., and determine the amount for which an assessment should be made, and to allow in reduction of the assessment certain sums as dividends arising from the interest from the safety fund due the policy holders.

POINTS AND AUTHORITIES.

I.

This court has no jurisdiction of this cause for the reasons stated in the motion to dismiss or affirm heretofore filed by defendant in error, and this writ of error was sued out for delay for the reason therein stated.

II.

The Supreme Court of Missouri gave full faith and credit to the decree of the Connecticut court in the Dresser case. But the decision of the Supreme Court of Missouri was adverse to the plaintiff in error upon two independent grounds, one of which was a question of general law, namely that the assessment in question was void because it was not levied by proper authority, and that no record was made or kept of it. This Court will not inquire whether the decision on that ground was or was not correct.

Murdock v. Memphis, 20 Wall. 590;
Eustis v. Bolles, 150 U. S. 361;
Castillo v. McConnico, 168 U. S. 674, 679.

III.

The charter of the company places the management of its affairs in its board of directors and the assessment made by the president and secretary was void.

IV.

The assessment called for the exercise of discretion on the part of the directors and this power cannot be delegated.

> Farmers Milling Co. v Ins. Co., 127 Ia. 314;
> Farmers Mutual Ins. Co. v. Chase, 56 N. H. 341;
> Garretson v. Equitable, Etc., Assn., 93 Ia. 403;
> Bacon on Benefit Soc. & Ins., Sec. 377.

The directors at no time delegated this important discretionary power to its ministerial officers even if such a power could be delegated.

V.

It is incompetent to show that it was a custom of the president and secretary to make assessments without authority, unless it further appears that Frank Barber had knowledge of the custom. No such knowledge is shown.

> Nilblack on Benefit Soc., Sec. 252;
> Underwood v. Legion of Honor, 66 Ia. 134.

VI.

In levying Assessment 126, the company included taxes which it was contended was required to be paid by the State of Missouri (R. 127). Under the laws of the State of Missouri taxes were not required to be paid upon assessments and this assessment is void for that reason.

Masonic Aid Assn. v. Waddell, 138 Mo. 628;
Westerman v. Supreme Lodge K. of P., 196 Mo. 670.

VII.

Section 7068 of the Revised Statutes of Missouri, 1909, does not violate any of the provisions of the Federal Constitution.

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123;
Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308;
Iowa Life Ins. Co. v. Lewis, 187 U. S. 335;
Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301;
Fraternal Mystic Circle v. Snyder, 227 U. S. 497;
Williamson v. Liverpool, Etc., Ins. Co., 141 Fed. 54;
Keller v. Home Life Ins. Co., 198 Mo. 440.

VIII.

Under the Missouri practice, as well as under the practice in this court, a federal question must be raised at the earliest stage of the proceedings possible, and it is too late to raise it for the first time in a motion for rehearing in the Supreme Court of the state or by assignment of errors in this court.

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123-134;
Johnson v. New York Life Ins. Co., 187 U. S. 491;
El Paso & S. W. R. Co. v. Eichel, 226 U. S. 590;
Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559;
Lohmeyer v. Cordage Co., 214 Mo. 685.

The question must be raised in the trial court when the state practice so requires.

Mutual Life Ins. Co. v. McGrew, 188 U. S. 291.

IX.

It is not within the jurisdiction of this court to review the decision of a state court on writ of error on questions of fact.

Murdock v. Memphis, 20 Wall. 429;
Dower v. Rogers, 151 U. S. 658.

X.

The question that the assessment must be made by the board of directors, came into the case by an instruction at the trial requiring the jury to so find. The plaintiff in error did not raise the question that this violated any constitutional right, either in the trial court or in the Supreme Court of Missouri, and it is too late to raise it for the first time in this court.

ARGUMENT.

I.

Defendant in error still contends this court has no jurisdiction of this cause for the reasons stated in her motion to dismiss or affirm now before this court, and that the writ of error was sued out merely for delay, and the alleged federal questions attempted to be raised, had been decided adversely to the contention of plaintiff in error so often by this Court when this writ of error was sued out that they were conclusively established to be without merit, and that the alleged federal questions are so manifestly frivolous and unsubstantial that it necessarily follows that the writ was petitioned solely for the purpose of delay, and that defendant in error is entitled to interest and damages under Section 2 of Rule 23 of this court.

II.

The Supreme Court of Missouri gave full faith and credit to the decision of the Connecticut court in the Dresser case. The plaintiff in error broadly states that the question in this case is the same question decided by this court in the case of Hartford Life

Ins. Co. v. Ibs, 237 U. S. 662. This is clearly a mistake, for in that case the Supreme Court of Minnesota refused to consider the judgment in the Dresser case, which had been excluded as evidence by the trial court. In this case the Supreme Court of Missouri expressly considered the Ibs case and gave full faith and credit to the Dresser case.

The policy in question provides for quarterly assessments to pay death losses, to be paid on the first days of March, June, September and December of each year, and of course it does not provide for an assessment to pay a death loss which has not accrued. The policy provides that the insurance is not payable until ninety days after proofs of death to pay the insurance. In other words, the plaintiff in error makes no contention that assessments can be made to pay death losses which have not accrued, but its argument finally amounts to that, or it necessarily amounts to the proposition that under the Dresser decree the company is entitled to always have in its hands the average amount of one quarterly assessment for the previous year, in this case $300,000.00, with which to pay death losses, regardless of the time of year or the periods of assessments, and regardless of the fact that the company may have started out on a quarterly period with the sum of $300,000.00 in its hands, the average quarterly assessment for the previous year. This contention is not

supported by the judgment in the Dresser case, for the court in that case simply held "it is proper and reasonable that the company should hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the company should hold more than the amount of one average quarterly assessment for the previous year." Assessment 126 in question in this case was made for death losses accruing before December 31st, 1909, and at the commencement of that quarter the company had in its hands funds in a greater amount than one quarterly assessment for the previous year. The Dresser decree was not rendered until March 23, 1910, therefore the company in this case started out at the beginning of the last quarter of 1909 with more than $300,000.00 in its hands available for the payment of death losses arising during that quarter. Up to December 31, 1909, the end of this quarter, the company had received proofs of deaths of 119 persons and the amount of their policies amounted to the sum of $322,378.48, and on the 31st day of December, 1909, the company with the funds in its hands, had paid all of said death claims except $41,000.00, and at that time had in its hands with which to pay the balance of said death claims of $41,000.00, the sum of $74,938.92, and also on that day received interest from the safety fund available

in the reduction of assessments and payments of death losses, the further sum of $19,447.39, making a total of cash on hand available for the purpose of paying this $41,000.00 death losses, the sum of $94,-368.31.

The company also had some other funds in its hands, as shown by its annual report to the Superintendent of Insurance of the State of Missouri, and there were also assessments in course of collection of $185,000.00, for the time of payment of assessments had been extended by the company on a number of policies, shown by the record to amount to $609,000.00 of insurance. But on December 31, 1909, the company, with $53,386.31 in cash in its hands, after paying all the death losses existing at that time, levied an assessment of $322,378.48, notwithstanding the quarterly assessments for the previous years had averaged about $300,000.00 and without taking into account the fact that it had this large sum of money in its hands available to pay death losses, and without taking into consideration these other funds shown by its report to the Superintendent of Insurance of the State of Missouri, and without taking into consideration the $185,000.00 premiums in course of collection, or whatever portion thereof were due to the men's department of the safety fund. Assessment 126 was actually made on January 5th or 6th, 1910, as of the date of December 31, 1909, and the evidence

shows that the condition of the funds on hand were considered as of the date of December 31, 1909, as well as the death claims proven up to that date. Therefore, under the Dresser decree, the assessment in question was admittedly excessive in the sum of $53,386.31, to say nothing of these other funds and assessments in course of collection, as shown by the report before referred to. The company, in order to justify this excessive assessment, attempted to show that after the assessment was made that it received the proof of other death losses in the sum of $128,166.67. However, fifteen of said death claims, to the amount of $41,000.00, are included in the list in Assessment 126, and should be deducted from this amount, even if the contention of defendant in error is conceded, leaving only $87,166.67, of death claims unpaid on December 31, 1909, not included in Assessment 126.

But these death claims were not included in and taken into consideration when the assessment was made, and we do not see now how they can be considered as a defense for making this excessive assessment. There is no evidence that they had ever been reported at the time of the assessment. Still, if we do take into consideration death claims unpaid which were not included in that assessment to the amount of $87,166.67, the assessment is still excessive in the sum of $7,219.64, according to the ad-

mitted cash on hand, and not considering the sums mentioned in the report before referred to. Besides, Assessment 126, on its face, was made to cover 119 death losses specified therein, and the notice of assessment was accompanied by a list of the names of the persons who had died, and the amount of their policies, and so far as we know no court has ever held that an assessment made for a specific and definite purpose on its face can afterwards be said by the company to be made for other and different purposes, and to take into account matters which were not in the knowledge of the company at all when the assessment was made.

In order to justify this excessive assessment, the defendant in this case further contends that there arose from January 1, 1910, to January 29, 1910, the date on which the assessment notices were actually mailed, death losses in the sum of $120,000, and is now seriously contending that these claims should be taken into consideration, notwithstanding the deaths had not occurred when the assessment was made, and that the defendant had no knowledge of them, and did not take them into consideration in making the assessment. It ought to be a sufficient answer to say that they were not taken into consideration when the assessment was made, and that the assessment was actually made according to the evidence as of December 31, 1909, for certain specific

death losses mentioned in the assessment, and that this court has no right whatever to take into consideration anything that was not actually considered when the assessment was made in order to justify the assessment.

But the Dresser decree did not give defendant the right to assess in advance to replenish the mortuary fund for more than the average of the four preceding quarterly assessments, which plaintiff in error admits to be about $300,000.00. This decree, therefore, did not give the company the right to take into consideration these claims in making a legal assessment in advance, for it had no right to levy an assessment ahead for more than one quarterly assessment. This decree did not give the company the right to ignore the funds it had in its hands available to death losses when it made an assessment.

Therefore it necessarily follows in this case that in any view taken the assessment is excessive and void for the reason that claims not taken into consideration when the assessment was made can not be considered, and claims arising after the date of which the alleged assessment was made can not be considered, for under the Dresser decree defendant could not have taken such claims into consideration and have levied an assessment for a greater amount than the average of the four preceding quarterly assessments. Upon these admitted facts, the Supreme Court

of Missouri gave the Dresser decree full faith and credit, and under it properly decided that the assessment was excessive and void.

III, IV and V.

But the Supreme Court of Missouri held this assessment void for another reason, which is a question of general law, and even if it failed to give full faith and credit to the Dresser decree, which we deny, yet this court will not review and reverse its decision. The evidence shows, in this case, that the charter of the company provided that "all the affairs of said corporation shall be managed and controlled by a board of not less than seven directors." The evidence also shows that the assessment in question was made by the president and secretary, and probably a vice-president, and that no record of the assessment was made or kept. The evidence does not show that this important power was ever delegated to these ministerial officers even if such an important, discretionary power could be so delegated, which we deny. The plaintiff in error, in its argument, now contends that there is evidence in the record that the previous assessment from 1907 until the death of Mr. Keeney, president of the company, the date of which is not shown, were made by the president and secretary of the company, and upon this fact plaintiff in error

attempts to base a waiver. But it is not shown that Frank Barber ever knew that these ministerial officers were exercising any such important powers. Under all the authorities even if the evidence shows that it was the custom of the president and secretary to make these assessments without authority, yet Frank Barber can not be bound thereby unless it is shown he had knowledge of such custom. But this important, discretionary power was placed in the board of directors, and under the authorities cited such a power can not be delegated. As regards these policy holders, this was the most important business the company had to perform, and the law will not imply that the directors delegated such an important matter to its ministerial officers, for is is beyond the scope of the ordinary duty of such officers even if the act is ministerial, which we deny. It is fundamental that the directors of a corporation can not delegate their discretionary powers unless authorized to so do by the charter of the company or by statute. Therefore the Supreme Court of Missouri held, in its opinion, as follows:

> "In all the mutations which the appellant has undergone at the hands of the legislature there are some things in its original charter which seem to have remained intact. One of them provides: 'All the affairs of said corporation shall be managed and controlled by a board of not less than seven directors (the number of said directors to

be determined by the by-laws of said company)' and the other vests the power to make by-laws in the stockholders. It is not contended by the appellant that this assessment was made by the directors or by any committee appointed by the directors, or in accordance with any rule prescribed by them, or that it ever passed under their observation as a board, or was ever spread upon the corporate records. Nor is it contended that there is any by-law prescribing the method of levying the assessment. The action of the company in making assessments involved the use of the highest discretion. It claimed the right, in the performance of that act, to determine an amount to be kept on hand for the payment of all such losses as might occur immediately upon the receipt of the proof and independently of any assessment therefor. The levying of these assessments and the determination of the amount of this fund which was limited only by circumstances of which it was required to judge, subject only to the maximum prescribed in the Dresser judgment, were the highest and most important acts and involved the largest discretion of any which related to the class of insurance to which its activities were mainly directed during the twenty years preceding 1899. If the legislative direction that all its affairs were to be managed and controlled by their direction did not include this, it would be difficult to say what it did include. It evidently means more than the appointment of the usual officers of such corporation. Under these circumstances we think the executive officers of the company were without

power to determine these things and to levy these assessments otherwise than under their direction to be shown by its records (Bacon on Benefit Societies and Insurance, Sec. 377; Farmers' Milling Co. v. Insurance Co., 127 Iowa 314; Insurance Co. v. Chase, 56 N. H. 341; Garretson v. Equitable M. L. Assn., 93 Iowa 402)."

VI.

The record in this case shows that the assessment in question included certain taxes which the company claimed the assured owed to the State of Missouri (Rec., p. 127). But the Missouri statute as construed by the Supreme Court of Missouri in the cases of Masonic Aid Assn. v. Waddel, 138 Mo. 628, and Westerman v. Supreme Lodge K. of P., 196 Mo. 670, does not cover assessments for taxes against insurance companies on the assessment plan, but only premiums of foreign insurance companies, and for that reason Assessment 126 is clearly void. The Supreme Court of Missouri has not put its decision upon that ground, but defendant in error under the authorities may now assign in this court another ground not considered by the Supreme Court of Missouri, and if it is found by this court to be sound in law, and the judgment of the Supreme Court of Missouri is right, it will not be reversed on writ of error.

Murdock v. Memphis, 20 Wall. 590;
Walter A. Wood Co. v. Skinner, 139 U. S. 193.

VII and VIII.

Section 7068 of the Revised Statutes of Missouri, 1909, providing for damages and attorneys' fees for vexatious refusal to pay the loss under a policy of insurance, in no way violates the Federal constitution.

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123;
Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308;
Iowa Life Ins. Co. v. Lewis, 187 U. S. 335;
Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301;
Fraternal Mystic Circle v. Snyder, 227 U. S. 497;
Williamson v. Liverpool, Etc., Ins. Co., 141 Fed. 54;
Keller v. Home Life Ins. Co., 198 Mo. 440.

This question has been decided so often by this court under similar statutes that it was conclusively established to be without writ when this writ of error was sued out and it does not even give color for a federal question.

The plaintiff in error does not contend that the act itself makes the mere refusal to pay sufficient

evidence of bad faith so as to justify the recovery of the penalties therein provided, but contends that the Supreme Court of Missouri, in Keller v. Home Life Ins. Co., 198 Mo. 440, and the St. Louis Court of Appeals, in Stix v. Travelers Ins. Co., 175 Mo. App. 171, have so held. This is not true.

The courts of Missouri under this statute since the case of Brown v. Ry. Passenger Assurance Co., 45 Mo., *l. c.* 227, have held that "the whole question of vexatious refusal or delay is a matter of fact to be determined by the jury. They must make up their verdict on this issue by a general survey of all the facts and circumstances in the case; and if, upon a full consideration, they conclude that the refusal was unjustifiable and vexatious, the law authorizes them to assess the damages. The statute will not admit of the construction contended for by the counsel for the plaintiff in error, that before damages are allowed it must be explicitly proved by the plaintiff that the delay or refusal was vexatious."

Keller v. Home Life Ins. Co., 198 Mo., *l. c.* 460-461;
Stix v. Travelers Ins. Co., 175 Mo. App. 171.

The plaintiff in error seems to contend there was no evidence in this case tending to prove a vexatious refusal to pay on its part. But there was evidence from which the jury might infer a vexatious refusal

to pay upon the consideration of all the facts and circumstances in evidence. However, this is a question of fact which was decided by the jury in the trial court and the Supreme Court of Missouri. It is not within the jurisdiction of this court to review the decision of the state court upon questions of fact.

Dower v. Rogers, 151 U. S. 658.

The plaintiff in error has not raised the question that there was no evidence tending to prove vexatious refusal to pay the loss either in its motion for new trial in the trial court, or in its assignment of errors and brief in the Supreme Court of Missouri, or in its motion for rehearing in the Supreme Court of Missouri, and can not raise it for the first time in this court.

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123, *l. c.* 134;
Johnson v. New York Life Ins. Co., 187 U. S. 491;
El Paso & S. W. R. Co. v. Eichel, 226 U. S. 590;
Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559.

Under the Missouri practice a constitutional question, whether federal or state, must be raised at the earliest stage in the proceedings possible under the circumstances. If it can be raised by the pleadings it must be pleaded. If not, at least in a motion for

new trial in the trial court. It can not be raised in the Supreme Court for the first time.

Lohmeyer v. Cordage Co., 214 Mo. 685.

This court has often decided that if a federal question is not presented before decision by the state court, it is too late to raise it by assignment of errors in this court.

Bollin v. Nebraska, 176 U. S. 83;
Citizens Savings Bank v. Owensboro, 173 U. S. 636;
Winona, Etc., Land Co. v. Minnesota, 159 U. S. 540.

Under the practice in Missouri all errors in the trial court must be assigned in a motion for new trial, to be filed within four days after the verdict and judgment.

Revised Statutes of Mo., 1909, Sec. 2025;
McCoy v. Farmer, 65 Mo. 244;
Acock v. Acock, 57 Mo. 155;
Lancaster v. Washington Life Ins. Co., 62 Mo. 121;
Curtis v. Curtis, 54 Mo. 352.

This court has decided that the proper time to raise a federal question is in a trial court whenever that is required by the state practice.

Mutual Life Ins. Co. v. McGrew, 188 U. S. 291.

IX.

Finally, many of the questions raised by plaintiff in error are questions of fact passed upon by the state court which this court has no jurisdiction to review, because they have no connection whatever with any alleged federal question.

The charter of the company places the management of the affairs of the corporation in the board of directors. It is admitted the assessment was not made by the board of directors, but by the president and secretary. Whether such a power can be delegated or was delegated in this case is as to the first proposition a question of general law. And as to the second proposition, a question of fact clearly not connected with a federal question at all. The same is true as to the question whether or not Frank Barber was bound by the alleged custom of the president and secretary to make the assessment if there was such a custom. Also the question whether or not knowledge on his part was necessary, or whether he had such knowledge. Likewise, the question as to whether a corporation has to speak through its records, as held by the Supreme Court of Missouri, and whether there was sufficient evidence tending to prove a vexatious refusal to pay the loss. All of these and other questions of both fact and general law raised by the plaintiff in error which we have discussed and cited the record in this case as to the facts and decisions of

different courts as to the law, which we believe support the state court in its decision, are questions, which, in our opinion, this court is without authority to review, because they are in no way connected with a federal question.

Dower v. Rogers, 151 U. S. 658;
Murdock v. Memphis, 20 Wall. 429.

Defendant in error submits this court has no jurisdiction to hear and determine this cause, for the reason that the decision on the merits of this cause is based by the Supreme Court of Missouri upon two independent propositions, one of which it can not be contended is a federal question, and for the reason that the other federal questions attempted to be raised by plaintiff in error have been decided so often by this court that they were settled before the issuance of the writ of error in this case, and for that reason can not give this court jurisdiction. But if the Court concludes it has jurisdiction, we submit that upon consideration of the questions involved, the judgment should be affirmed with interest, damages and costs.

Respectfully submitted,

CHARLES E. MORROW,

Attorney for Defendant in Error.

ROBERT KELLEY,

Of Counsel.

FILED
SEP 7 1917
JAMES D. MAHER

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

THE HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs.

ROSA BARBER,
Defendant in Error.

No. 253

(25,463.)

On Writ of Error to the Supreme Court of Missouri.

MOTION TO DISMISS OR AFFIRM, BRIEF AND TRANSCRIPT OF RECORD.

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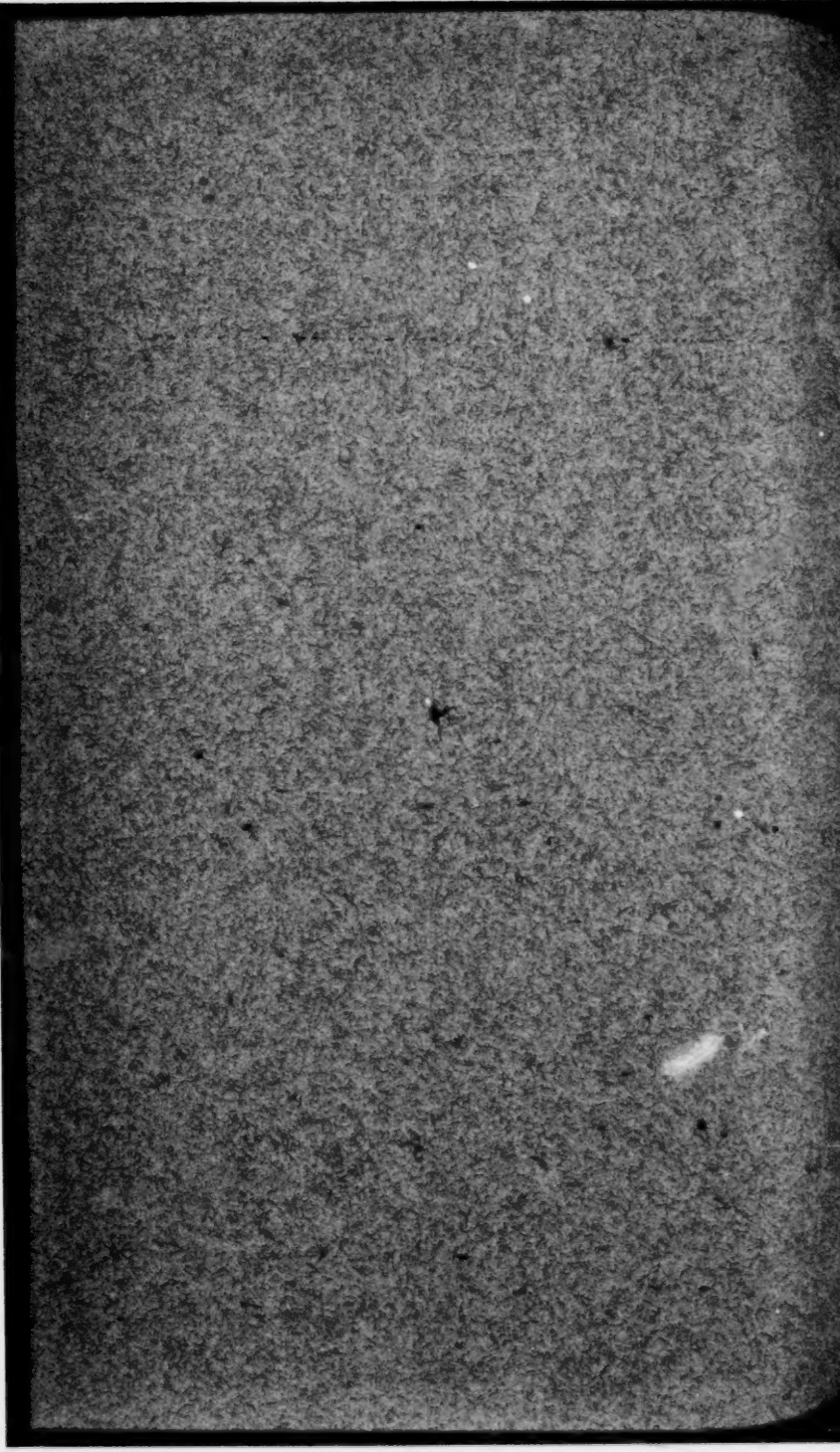

INDEX TO BRIEF OF ARGUMENT.

	Page
Motion to dismiss or affirm	35
Notice of motion to dismiss or affirm	36
Statement of case	1-11
Points and authorities	12-34
Point I. The decision of the Supreme Court of Missouri was adverse to plaintiff in error upon two grounds, one of which was a general question of law, and this Court has no jurisdiction	12
Point II. The contention that the statute of Missouri, authorizing damages and attorneys' fees, for vexatious refusal to pay the loss under insurance policies, has been decided so often against this contention that this ground was conclusively established to be without merit when this writ of error was sued out, and it is not sufficient to give this Court jurisdiction	13
Point III. The Supreme Court of Missouri gave full faith and credit to the judgments of the Connecticut Court in the Dresser case	19
Point IV. The Supreme Court of Missouri did not refuse to give full faith and credit to the charter of plaintiff in error, granted by the Legislature of Connecticut. The Court gave full faith and credit to it	25

INDEX TO PORTIONS OF TRANSCRIPT OF RECORD IN APPENDIX.

	Page
Assignment of errors	1
Opinion of Supreme Court of Missouri	8
Motion for rehearing in Supreme Court of Missouri	30
Amended petition	31
Amended answer	33
Reply	43
Judgments in Dresser case	48
Provision of policy sued upon	46
Provision of charter of company	76
Notice of assessment 126	78
List of death losses accompanying assessment 126	80
Testimony of secretary of company as to by whom, how and when assessment was made	76
Testimony of secretary of company as to funds on hand at the time of assessment	93, 100
Testimony of secretary that all of death losses for which assessment was made but fifteen (amount $41,000.00) had been paid when assessment was made, and that the company then had on hand with which to pay same $94,386.31	82, 93
Statute of Missouri	100

LIST OF AUTHORITIES CITED BY DEFENDANT IN ERROR.

	Brief Page
Adams County v. R. R., 112 U. S. 123	12
Allen v. Arguimban, 198 U. S. 149	12
Acock v. Acock, 57 Mo. 155	28
Blount v. Walker, 134 U. S. 607	12
Baupre v. Noyes, 138 U. S. 397	12
Bollin v. Nebraska, 176 U. S. 83	28
Curtis v. Curtis, 54 Mo. 352	28
Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559	26
Castillo v. McConnico, 168 U. S. 674, 679	13
Citizens Savings Bank v. Owensboro, 173 U. S. 636	28
DeSaussure v. Gaillard, 127 U. S. 216	12
Douglas v. Wallace, 161 U. S. 364	18
Eustis v. Bolles, 150 U. S. 361	12-13
El Paso & S. W. R. Co. v. Eichel, 226 U. S. 590	26
Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308	14
Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301	14
Fraternal Mystic Circle v. Snyder, 227 U. S. 497	14
Giles v. Teasley, 193 U. S. 146	12
Hopkins v. McLure, 133 U. S. 380	12
Hale v. Akers, 132 U. S. 554	12
Hammond v. Johnson, 142 U. S. 73	12
Iowa Life Ins. Co. v. Lewis, 187 U. S. 335	14
Johnson v. Risk, 137 U. S. 300	12
Johnson v. New York Life Ins. Co., 187 U. S. 491	26
Keller v. Home Life Ins. Co., 198 Mo. 440	14-17
Leathe v. Thomas, 207 U. S. 93	12
Lowe v. William, 94 U. S. 650	18
Lancaster v. Washington Life Ins. Co., 62 Mo. 121	28

Lohmeyer v. Cordage Co., 214 Mo. 685..... 28
Leigh v. Green, 193 U. S. 97..... 29
Mo. Pac. Ry. Co. v. Fitzgerald, 160 U. S. 556..... 12
Murdock v. Memphis, 20 Wall. 590..... 12
McLaughlin v. Fowler, 154 U. S. 663..... 12
Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123 .....14, 16, 26
Mallett v. North Carolina, 181 U. S. 45..... 29
Mutual Life Ins. Co. v. McGrew, 188 U. S. 291.... 29
McCoy v. Farmer, 65 Mo. 244..... 28
New Orleans Water Works Co. v. Louisiana, 185 U. S. 344..... 19
Rilfe v. Wilson, 131 U. S., Appendix p. clxxxix... 17
Ruckman v. Bergholz, 131 U. S., App. cxliii..... 19
Seeburger v. McCormack, 175 U. S. 274..... 12
Williamson v. Liverpool, Etc., Ins. Co., 141 Fed. 54 14-17
Walston v. Nevin, 128 U. S. 578..... 19
Winona & St. Peter R. R. Co. v. Plainview, 143 U. S. 390.....24-28

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

THE HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,
vs.
ROSA BARBER,
Defendant in Error.
No. 633.

(25,463.)

On Writ of Error to the Supreme Court of Missouri.

MOTION TO DISMISS OR AFFIRM, BRIEF AND TRANSCRIPT OF RECORD.

STATEMENT OF THE CASE.

This suit was commenced in the Circuit Court of Johnson County, State of Missouri, by the defendant in error against the plaintiff in error on a policy of insurance of $2,000.00 issued on the 4th day of Sep-

tember, 1893, to Frank Barber. The plaintiff is his widow and named as beneficiary in the policy. The petition declares upon this policy of insurance, and also alleged that defendant had vexatiously refused to pay the loss and asked 10 per cent damages and $500.00 attorney's fee, under the provision of Section 7068 of the Revised Statutes of Missouri, 1909, which provides that in any action against an insurance company under a policy of life insurance, if it appears from the evidence that such company has vexatiously refused to pay the loss, the Court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not exceeding 10 per cent on the amount of the loss and a reasonable attorney's fee (Rec., pp. 1, 2, 3; Appendix, p. 31). The answer admitted the execution of the policy (Rec., p. 4); that Frank Barber died on June 5, 1910 (Rec., p. 4); that he had complied with all the conditions, stipulations and requirements in the policy except that he failed to pay assessment 126, alleged to be due on the 20th day of March, 1910, and certain dues (Rec., pp. 9, 10). The failure to pay assessment 126 was the only defense made to the merits of the cause. But the answer pleaded that Section 7068 of the Revised Statutes of Missouri, 1909, authorizing the imposition of damages and attorney's fees is unconstitutional and void, because it violates Section 10, Article I, of the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States, and also that it violated certain provisions of the Constitution of Missouri (Rec., pp. 12, 13; Appendix, p. 33).

The answer also pleaded that the mortuary fund,

out of which the payment of death losses was to be made, was maintained in the State of Connecticut, and was subject to the control and direction of the courts of that State, and that the manner in which said fund was to be held and administered had been the subject of judicial construction by the courts of that state in the case of Charles A. Dresser *et al.* v. Hartford Life Insurance Company, and that the decision in that case was *res adjudicata* as to the plaintiff's rights in the fund in question in this suit. A copy of the decree and judgment in that case were attached to the answer (Rec., pp. 11, 12; Appendix, p. 33).

The action was tried before a jury, and on the 3rd day of January, 1913, the jury returned a verdict in favor of the plaintiff in the sum of $2,276.00, together with $200.00 for vexatious delay, and $500.00 attorney's fee, making in all $2,976.00 (Rec., p. 317), for which sum judgment was entered against the defendant (Rec., p. 52).

The plaintiff in error thereupon appealed said cause to the Supreme Court of the State of Missouri, and on the 30th day of March, 1916, that court affirmed the judgment of the Circuit Court of Johnson County, Missouri, in a written opinion filed (Rec., pp. 334, 336, Appendix 8).

Thereafter plaintiff in error moved for a rehearing of said cause, which motion was overruled (Rec., p. 347; Appendix, p. 30), and on the 7th day of August, 1916, the plaintiff in error presented to the Honorable A. M. Woodson, Chief Justice of the Supreme Court of Missouri, its petition for an allowance of a writ of error therein from this court to the Supreme

Court of Missouri, which was allowed (Rec., p. 372).

As before stated, it was admitted in the pleadings that on the 4th day of September, 1893, plaintiff in error issued to Frank Barber the policy of insurance sued upon in the sum of $2,000.00, payable to Rosa Barber, his wife, defendant in error. It was also admitted by the pleadings, as before stated, that said Frank Barber had complied with all the conditions, stipulations and requirements in said policy on his part, to be performed by him, except the payment of assessment 126, due on March 20, 1910, and that he died on the 5th day of June, 1910. The only defense pleaded by the plaintiff in error to the merits of this cause is the failure to pay said assessment on March 20, 1910, and it is claimed that under the terms of the policy the same became canceled and was void. The defendant in error, beneficiary in the policy, claimed that the payment of the assessment demanded, that is "Call No. 126", was unlawful; that the same was not duly and legally assessed against Frank Barber; that the alleged assessment was made by certain officers of the company when under the terms of the charter it should have been made by the board of directors, and that the alleged assessment was excessive and void, and that the failure to pay it did not justify the forfeiture of the insurance.

The policy provides that it is issued in consideration of certain assessments levied against the members to form a mortuary fund for the payment of all indemnity accrued by the deaths of members, and these assessments, under the terms of the policy, are to be levied against all the members whose cer-

tificates are in force at the date of such deaths. The assessments are to be paid within thirty days of the date of the notices, and the proceeds thereof shall form a mortuary fund, and the death lossess are due and payable out of the mortuary fund (Rec., pp. 56, 57). The policy also provides for the payment of certain expense dues of $3.00 per annum on each $1,000.00 of insurance, and the dues are to be retained by the insurer as compensation for managing and transacting the business of the department in which the policy was issued (Rec., pp. 56, 57; Appendix, p. 46). These dues were payable quarterly.

The policy also provided that interest and dividends upon a certain fund of a million dollars, known as the "Safety Fund", should be applied to the payment of these dues (Rec., pp. 56, 57).

As shown by its charter (Rec., p. 44) and the policy (pp. 56, 57) the defendant is an "old line" standard, level premium life insurance company. The stock of the corporation is owned by individuals for profit. It had authority to issue different forms of policy, but the one sued upon is an assessment policy and was one of a series of something over 100,000 issued by the defendant shortly before and after the date of the one in this suit. The plan was that the insurants should each contribute the sum of $10.00 a thousand to a so-called "Safety Fund", the company claiming to the insured that this Safety Fund, with the interest earnings thereon, would enable the company to carry the insurance at stated assessments to be levied quarterly, the amounts of which were set out on the back of the policy; but the company reserved the right to collect additional assessments

in the event the interest earnings from the Safety Fund and the standard assessments proved insufficient to pay death losses. Plaintiff in error claimed that notices of an assessment were sent by mail to Frank Barber on January 29, 1910, and by this notice assessment 126 was due on March 1, 1910, but it was stated in the notice that payments would not be received later than March 5, 1910 (Rec., p. 139; Appendix, p. 78). It was also stated that every member whose payments did not reach the office of the company before March 5, 1910, would be obliged to pay 50 cents in order to have the policy reinstated, and that after March 20, 1910, the company reserved the right to require a medical examination as a condition of reinstatement (Rec., p. 126). This particular assessment was made, as shown on its face, to meet 119 death losses, and a list of the names of the persons who had died, and the amount of the policies of insurance upon their lives accompanied the notice of assessment (Rec., p. 139 [Ex. N, bet. pp. 130, 131]; Appendix, p. 80). The amount of Mortality Call 126 is for the sum of $13.09, and $1.50 due in advance, making a total of $14.59, which is credited with $1.40 as dividends accruing from interest on the Safety Fund, leaving the amount claimed $13.19 (Rec., p. 125). The amount of the 119 death claims for which call 126 was made was $322,378.48 (Ex. N., bet. pp. 130, 131). Assessment 126 was not made to pay these death losses direct, for the greater part thereof had been paid out of a fund maintained by the company for that purpose. The conditions existing on December 31, 1909, was taken into consideration upon which to calculate assessment 126 (Rec., p. 257).

The plaintiff in error proved, by the evidence of Mr. Lawrence, the secretary of the company, that on December 31, 1909, the date as of which the alleged assessment 126 was made, the company had in its Mortuary Fund, subject to the payment of death claims, $74,938.92 (Rec., p. 232), and also $19,447.39 interest on the Safety Fund, which was available to reduce the amount of the assessment as dividend (Rec., p. 235), and that on December 31, 1909, all of the 119 death claims but fifteen had been paid (Appendix, pp. 82-93); that $281,378.48 of said death claims were paid before December 31, 1909, and that $41,000.00 of said 119 death claims were paid after December 31, 1909, and that the company had in the Mortuary Fund on December 31, 1909, with which to pay the $41,000.00 of death claims of said call so remaining unpaid at that date the sum of $94,368.31, and that said funds were amply sufficient to pay the same, if the company had deemed it advisable to so do (Rec., p. 233). He further testified that $7,000.00 of said fifteen unpaid death claims was actually paid between December 31, 1909, the date as of which the assessment was made, and January 29, 1910, the date of the notice of the alleged assessment, so that when notices of assessment 126 is claimed in fact to have been sent to the assured, all of the death losses for which the same is claimed to have been levied had been paid excepting $34,000.00 (Rec., pp. 220, 231; Appendix, pp. 93-100).

The charter of the corporation provided that "**all the affairs of said corporation shall be managed and controlled by a board of not less than seven directors**" (Rec., p. 70, Appendix 76).

The evidence of the plaintiff in error, by the testimony of its secretary, also showed that assessment 126 was made by the president and secretary and probably one of the vice-presidents of the company about the 5th or 6th of January, 1910, and that no record of the same was made or kept (Rec., p. 254; Appendix, p. 76). It was not made by the board of directors of the company, nor was it shown that the board of directors had ever delegated this power to its officers.

The plaintiff in error contended that it had a right under the decision in the Dresser case, above referred to, to levy assessments against the policy holders in advance to replenish its mortuary fund, and in anticipation of death losses before the death of the policy holders occurred, so that it would have a fund on hand with which to promptly pay death losses, and while the company admitted that on the date of assessment 126 it had on hand $94,386.31 with which to pay death losses, yet it still had the right to levy an assessment large enough to raise the full amount of one regular assessment of $322,378.48, after allowing for lapses. As of the date of assessment 126, all of the death losses for which the assessment was made were paid except $41,000.00, and this left in the hands of the company at that time of the $94,386.31 on hand the sum of $53,386.31. It was admitted that one average assessment would not be more than $300,000.00, yet it is admitted that the company attempted to assess the policy holders for $322,387.89, without taking into consideration that it had on hand $94,386.31 in its hands, applicable to the payment of death losses. Under the Dresser decree, the alleged

assessment was excessive in the sum of $94,386.31, to say nothing of some other funds the evidence tended to show was in the hands of the company for the payment of death losses at the time the alleged assessment was made.

The company claimed that on December 31, 1909, there were actually unpaid death losses in the sum of $128,166.66 (Rec., p. 273). However, fifteen of said death claims, to the amount of $41,000.00, it is admitted, are included in assessment 126 (Rec., pp. 231-277) and should be deducted from that amount, leaving only $81,166.67 of death claims unpaid on December 31, 1909, not included in assessment 126.

But these death claims were not included in and taken into consideration when assessment 126 was made. There is no evidence that they had ever been reported at that time to the company; still, if the unpaid death claims which were not taken into consideration in making the assessment, to the amount of $78,166.67, are considered, the assessment is still excessive in the sum of $7,219.64. In order to justify this assessment the company claimed that claims for deaths between January 1st and January 29th, 1910, in the sum of $120,000.00, should be considered (Rec., p. 275), but it is admitted that they were not taken into consideration in making the assessment, because the assessment was made as of date December 31, 1909, but even the Dresser decree does not permit the defendant to assess in advance to replenish the mortuary fund for more than the average of the four preceding quarterly assessments (Rec., p. 44) which plaintiff in error has admitted in its brief (pages 18 to 34) to be about $300,000.00.

From these facts it can be determined as a mathematical calculation that under any theory of the case the assessment was excessive and void for that reason.

The Supreme Court of Missouri, in disposing of this case, as shown by its opinion (Rec., pp. 335, 346; Appendix, p. 8), decided the case upon two grounds, namely (first) that the assessment was excessive and void, giving full faith and credit to the Dresser decree. (Second) that the assessment was void because it was made by the executive officers of the company when the charter of the corporation placed the management and control of its affairs in the board of directors, and it was not shown that any power had been delegated to the executive officers to make the same, and for that reason that they were without power to determine the matters necessary to levy an assessment, or to levy the same. The latter proposition, upon which the decision rests, is a question of general law.

The assignment of errors indicate that three federal questions are claimed to be involved (Appendix, p. 1). First, that the State Court failed to give full faith and credit to the two judgments rendered in the Dresser suit, and thereby violated Article IV, Section 1, of the Constitution of the United States, requiring full faith and credit to be given to the judgment of a sister state. Second, that the judgment of the Supreme Court of Missouri deprives the plaintiff in error of its property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, because Section 7068 of the Revised Statutes of Mis-

souri, 1909, authorizing the imposition of damages and attorney's fees for vexatious refusal to pay a loss authorizes the taking of property without due process of law. Third, that the Supreme Court of Missouri erred in failing and refusing to give full faith and credit to the charter of plaintiff in error, granted by an Act of the Legislature of Connecticut, contrary to Article IV, Section 1 of the Constitution of the United States (this ground was not raised in the court below).

The transcript of the full record in this cause has been printed and is now before this Court. As an appendix hereto we have printed so much of the transcript of record as we deem necessary to enable the Court to pass understandingly upon the federal questions sought to be raised by the plaintiff in error. On a motion to dismiss or affirm, it is only necessary to print so much of the record as will enable the Court to pass upon the questions involved (Carey v. Railroad, 150 U. S. 170; Walston v. Nevin, 128 U. S. 578).

POINTS AND AUTHORITIES.

I.

The decision of the Supreme Court of Missouri, on the merits of this case, was adverse to plaintiff in error upon two independent grounds, one of which was a question of general law, and not a federal question; namely, that the executive officers of the company had no power or authority to levy the assessment in question, because the management of the affairs of the corporation was placed by its charter in the board of directors, and this power had not been delegated, and for that reason that it was void. This Court has no jurisdiction, and the writ of error should be dismissed for that reason, unless the contention that the Missouri statute, allowing damages and attorneys' fees, violates the Constitution of the United States, will give this Court jurisdiction.

Leathe v. Thomas, 207 U. S. 93;
Seeburger v. McCormack, 175 U. S. 274;
Eustis v. Bolles, 150 U. S. 361;
Mo. Pac. Ry. Co. v. Fitzgerald, 160 U. S. 556;
Murdock v. Memphis, 20 Wall. 590;
Adams County v. R. R., 112 U. S. 123;
DeSaussure v. Gaillard, 127 U. S. 216;
Hopkins v. McLure, 133 U. S. 380;
Hale v. Akers, 132 U. S. 554;
Blount v. Walker, 134 U. S. 607;
Johnson v. Risk, 137 U. S. 300;
Baupre v. Noyes, 138 U. S. 397;
Hammond v. Johnson, 142 U. S. 73;
Giles v. Teasley, 193 U. S. 146;
Allen v. Arguimban, 198 U. S. 149;
McLaughlin v. Fowler, 154 U. S. 663.

All of the foregoing decisions of this Court announce the rule that in a case coming from a State Court, this Court can only consider federal questions decided adversely to plaintiff in error, and upon which a decision was necessary to the decision of the case, and if the judgment complained of is supported also on other and independent grounds of general law, this Court has no jurisdiction and the case must be affirmed or the writ of error dismissed for want of jurisdiction, nor will this Court inquire as to whether or not the State Court decided the question of general law correctly.

In Leathe v. Thomas, 207 U. S. 93, this Court said:

> "But Murdock v. Memphis does not stop there. It further establishes that where the record discloses such other and completely adequate ground, this Court does not inquire whether the decision was or was not correct, or reach a federal question by determining that they ought not to have been held to warrant the result (20 Wall. 590; Eustis v. Bolles, 150 U. S. 361; Castillo v. McConnico, 168 U. S. 674, 679)."

II.

The contention of plaintiff in error that Section 7068, Revised Statutes of Missouri, 1909, providing for damages and attorney's fees for vexatious refusal to pay the loss under insurance policies violates the federal constitution has been decided so often against this contention by this Court on similar statutes, and by the United States Circuit Court of Appeals, and the Supreme Court of Missouri, on the statute in ques-

tion, that this ground was conclusively established to be without merit when this writ of error was sued out, and it is not sufficient upon which to base the jurisdiction of this Court.

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123;
Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308;
Iowa Life Ins. Co. v. Lewis, 187 U. S. 335;
Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301;
Fraternal Mystic Circle v. Snyder, 227 U. S. 497;
Williamson v. Liverpool, Etc., Ins. Co., 141 Fed. 54;
Keller v. Home Life Ins. Co., 198 Mo. 440.

The Missouri statute in question is as follows:

"Sec. 7068. **Damages, When Recoverable.**—In any action against any insurance company to recover the amount of any loss under a policy of fire, life, marine or other insurance, if it appear from the evidence that such company has vexatiously refused to pay such loss, the Court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not exceeding ten per cent on the amount of the loss and a reasonable attorney's fee; and the Court shall enter judgment for the aggregate sum found in the verdict."

This Court has had the question of the constitutionality of similar statutes before it, and all of the constitutional questions as to this statute sought to

be raised by the plaintiff in error in this case have been decided adversely to plaintiff in error in those cases.

The Tennessee statute is as follows:

> "Sec. 1. That the several insurance companies of this State, and foreign insurance companies, and other corporations, firms or persons doing an insurance business in this State, in all cases where a loss occurs, and they refuse to pay within sixty days after a demand shall have been made by the holder of said policy, on which said loss occurred, shall be liable to pay the holder of said policy, in addition to the loss and interest thereon, a sum not exceeding twenty-five per cent on the liability for said loss; provided, that it shall be made to appear to the Court or jury trying the case that the refusal to pay said loss was not in good faith, and that such failure to pay inflicted additional expense, loss or injury upon the holder of said policy; and provided, further, that such additional liability, within the limits prescribed, shall, in the discretion of the Court or jury trying the case, be measured by the additional expense, loss and injury thus inflicted."

This Court held, in Fraternal Mystic Circle v. Snyder, 227 U. S. 497, that this statute did not violate the federal constitution.

The Texas statute provides:

> "In all cases where a loss occurs, and the life or health insurance company liable therefor shall fail to pay the same, within the time specified in

the policy, after demand is made therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss, together with all reasonable attorneys' fees for the prosecution and collection of such loss."

It was held by this Court, in Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308, that this statute in no way violated the constitution of the United States.

The Nebraska statute provides:

> "The Court, upon rendering judgment against an insurance company, upon any policy of insurance, shall allow the plaintiff a reasonable sum as an attorney's fee, to be taxed as part of the costs."

The constitutionality of this statute was raised in the case of Farmers, Etc., Insurance Co. v. Dobney, 189 U. S. 301. This Court in that case held the statute to be valid.

Again, in Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123, the constitutionality of the Texas statute was raised for the purpose of giving this Court jurisdiction.

In passing upon a motion to dismiss in that case, this Court said:

> **"As the repugnancy of the statute concerning the damages and attorney's fees was the only semblance of ground for invoking our jurisdiction and as that ground was conclusively established to be without merit when the writ of error was**

sued out, it follows that there is nothing upon which to base jurisdiction, and the writ of error must be dismissed.''

This section of the Missouri statutes was held constitutional by the United States Circuit Court of Appeals, Eighth Circuit, a court of high and persuasive authority.

> Williamson v. Liverpool, Etc., Ins. Co., 141 Fed. 54.

This statute was also held to be constitutional by the Supreme Court of Missouri. The question had been decided so often that that Court in its opinion in this says:

> ''**This claim has been decided by this Court and the Supreme Court of the United States until it has become too stale to serve as a foundation for our jurisdiction** (Keller v. Home Life Ins. Co., 198 Mo. 440; Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308; Iowa Life Ins. Co. v. Lewis, 187 U. S. 335; Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301; Fraternal Mystic Circle v. Snyder, 227 U. S. 497). **It is probably in view of these repeated decisions and others to the same effect that appellant has not favored us with a brief or argument upon this point.''**

This Court affirmed the judgment awarding 10 per cent damages under this very statute in Rilfe v. Wilson, 131 U. S., Appendix, p. clxxxix.

In view of the foregoing decision of this Court,

defendant in error contends that the alleged federal question attempted to be raised is so clearly frivolous as to authorize a dismissal, because the contention made by plaintiff in error has been so often determined adversely it may be regarded as settled.

But if we are wrong in this contention, then, although the Court may determine it has jurisdiction to entertain this alleged federal question, nevertheless, if the motion to dismiss is made with color of merit, the motion to affirm should be considered and decided.

> "Color for a motion to dismiss where the claim of a federal question is not so clearly frivolous as to authorize its dismissal may be sufficient to permit the Court to proceed to the consideration of the question involved, where with the motion to dismiss was a motion to affirm on the ground that the writ of error was merely taken for delay."
>
> Douglas v. Wallace, 161 U. S. 364.

> "A motion to dismiss a writ of error from the Supreme Court of the United States to a State Court will be denied where a federal question is presented by the record, but a motion to affirm will be granted where the question has already been so settled as to need no further argument."
>
> Lowe v. William, 94 U. S. 650.

> "Where the federal question presented is so frivolous that it is manifest the writ of error was taken for delay, the motion to dismiss for want

of jurisdiction will be overruled, but the motion to affirm will be granted."

Ruckman v. Bergholz, 131 U. S., App. cxliii.

"Where the question is raised in a case in the United States Supreme Court is a federal question, the Court will not sustain a motion to dismiss; but if there was color for the motion, and the contention made has been often determined adversely, so that the rule may be regarded as settled, a motion to affirm will be granted."

Walston v. Nevin, 128 U. S. 578.

"It has long been the holding of this Court that in order to warrant the exercise of jurisdiction over the judgments of state courts there must be something more than a mere claim that a federal question exists. There must, in addition to the simple setting up of the claim, be some color therefor, or, in other words, the claim must be of such a character that its mere mention does not show it destitute of merit; there must be some fair ground for asserting its existence, and, in the absence thereof, a writ of error will be dismissed, although the claim of a federal question was plainly set up."

New Orleans Water Works Co. v. Louisiana, 185 U. S. 344.

III.

The decision of the Supreme Court of Missouri is not against any right, title, privilege or immunity set up or claimed by plaintiff in error under the full faith and credit clause of the Constitution of the

United States. The State Court gave full faith and credit to the decrees of the Connecticut Court in the Dresser case.

The most that can be contended by the plaintiff in error that it had a right under the Dresser decrees to hold the amount of one average quarterly assessment for the purpose of enabling it to pay death losses promptly. It can not be contended that it should at all times have on hands the amount of one quarterly assessment. For, when any of the death losses were paid, the amount on hand should be reduced by the amount of losses so paid. This is the plain language of the decree, which says: "* * * But it is held that it is proper and reasonable that the company should hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the company should hold more than the amount of one average quarterly assessment for the previous year". One average quarterly assessment for the previous year was about $300,000.00. Plaintiff in error admits that it had on hand at the date of this assessment—December 31, 1909—applicable to the payment of death losses, which it was its duty to apply in the reduction of assessments, the sums of $74,938.92, derived from prior assessments, and $19,447.39, interest on the safety fund, which defendant had received, making a total of $94,386.31. There were also other funds shown in its hands, such as premiums in course of collection, etc., in both the Men's and Women's Divisions of the Safety Fund Department, which the report of the plaintiff in error to the Insurance Department of the State of Missouri listed as follows:

"Net premiums in course of collection, Safety Fund Department, $185,000.00." But defendant attempted to levy and assess the sum of $322,378.48, one full regular estimated quarterly assessment, after allowing for lapses, without taking into consideration money on hand. This assessment was attempted to be levied for the payment of certain specific death losses, 119 in number, a list of which accompanied the notice of assessment. The evidence of the plaintiffs in error also show conclusively, and it is not contradicted, that all of the death losses for which assessment 126, of $322,378.48, was made, were actually paid at the time of the alleged assessment, December 31, 1909, except 15, amounting to the sum of $41,000, leaving in the company's hands, after paying all death losses, $53,386.31. Yet, it is admitted in this case that with this sum of $53,386.31 in its hands defendant attempted to levy an assessment for $322,378.89 (the full amount of the call) and did not take into consideration any of the funds it held in its hands at that time, applicable to the payment of death losses and applicable to the reduction of assessments. Clearly under the Dresser decree this assessment was excessive.

In view of these facts, the Supreme Court of Missouri, in its opinion, found as follows:

> "In the light of these three funds, that is to say, (1) the fund proceeding directly from the regular quarterly assessments to pay the losses for which they are made; (2) the interest on the Safety Fund; and, (3) the 'margins' referred to in the Dresser judgment, we will examine the as-

sessment for the last quarter of 1909 embodied in call 126.

The average amount of the quarterly assessments for the preceding year had been $300,000.00, to which amount the defendant was limited by the judgment in maintaining this emergency fund. The assessment was levied by its express terms to pay 119 death losses therein enumerated, amounting, in benefits, to $322,378.48. On December 31, 1909, the last day of the quarter for which it was levied, all these losses except fifteen, amounting to $41,000.00, had been paid out of the fund on hand and there remained $74,938.92. On the same day there had been paid into the fund from the income account of the Safety Fund $19,447.30, making the amount left on hand $94,386.31. Deducting from this $41,000.00, the amount of the fifteen unpaid losses, left $53,386.31. In other words, the payment of all losses for which this was to be made left the last mentioned amount on hand in the fund, to be 'replenished' by the $322,387.48. This left a permanent fund on hand to the amount of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut Court and which represents the amount of excess above that authorized by the contract as modified by the judgment.

When this appeared in its evidence the defendant attempted to explain by the statement that there were other death losses which had accrued up to and including that day, bringing the total amount unpaid up to $128,000.00 in round numbers. Were this true, and the proofs in the hands

of the company, they should have been included in that assessment, but no claim is made that they belonged there. If the death had occurred before that date and no proof had been furnished the company, the fund would be 'replenished' to that amount in the next assessment, so that they would have no influence whatever in determining the amount of call '126', but could be promptly paid out of the surplus that call would leave on hand. It is intimated, however, that the $87,000.00 of these losses not included in call 126 had been included in previous assessments the payment upon which had been extended out of kindness to the certificate holders, and this suggestion is given color by the report of defendant filed in the insurance department of Missouri, as of that day, in which the following item appears:

'Net premiums in course of collection Safety Fund Department $185,000.00', and as this included both the Men's and Women's division of that fund it would probably account for the proportion of such pending collections in the Men's Department. For this an assessment had already been made which should be added to the amount of call 126 as a means of replenishing the fund. Its inclusion in this transaction in any other form would be in plain violation of the terms of both the policy and judgment.

It follows that the appellant, instead of sustaining the burden of proving a valid assessment as a foundation for the forfeiture of this policy, has shown a grossly excessive one made without

authority either in the contract or the judgment in the Dresser case, and in pursuance of a policy which runs like a solid thread through the record, of accumulating large funds at the expense of the policy holders, and withholding them as long as possible from distribution. When we consider that in addition to what it received out of the income of these funds, it was collecting at the time this assessment was made, and receiving as compensation for the conduct of this remnant of an abandoned business about eighty-five thousand dollars per year from the policy holders, we can see no excuse for extortion. We do not think a forfeiture can stand on the foundation of this assessment."

In view of the uncontradicted evidence and the facts conceded by plaintiff in error upon this record, the Supreme Court of Missouri, in its decision, did not fail to give full faith and credit to the Dresser judgments, and this proposition is too plain for argument. Under the Act of Congress it is only where a final judgment or decree in any suit in the highest court of a state, in which a decision is had, where a right, title, privilege or immunity is claimed under the Constitution of the United States, and the decision is against the right, title, privilege or immunity specially set up or claimed under such constitution, which may be re-examined and reversed or affirmed by the Supreme Court upon a writ of error.

In Winona & St. Peter Railroad Co. v. Plainview, 143 U. S. 390, defendant in error moved to dismiss a writ of error issued to the Supreme Court of the

State of Minnesota for want of jurisdiction. This motion was granted, and this Court said:

> **"To present a Federal question on the ground that full faith and credit were not given by the State Court to the judgments * * * in the Marshall and Illsley cases, it must appear that the State Court denied the plaintiff in error * * * some title, right, privilege or immunity held by plaintiff in error under the judgments * * * and that the decision of the State Court was against the title, right, privilege or immunity specially set up or claimed by the plaintiff in error under said constitution or statute. This does not appear by the records."**

Clearly, under the conceded facts in this record, the Supreme Court of Missouri gave the judgments in the Dresser case full faith and credit, and the plaintiff in error received at its hand every right, title, privilege or immunity which it could claim under the constitution by reason thereof. The jurisdiction of the Supreme Court in this case, we submit, can not be sustained on this proposition.

IV.

The Supreme Court of Missouri did not refuse to give full faith and credit to the charter of plaintiff in error, which was granted by an act of the legislature of Connecticut. On the contrary, it gave full faith and credit to it.

The charter provides:

> **"All the affairs of said corporation shall be**

managed and controlled by a board of not less than seven directors.''

The evidence of plaintiff in error showed that the alleged assessment 126, for a failure to pay which a forfeiture was claimed, was not made by the board of directors, but by the president and secretary, and probably the vice-president, and that no record was made or kept of it. It was not shown that the Board of Directors delegated this power to the executive officers of the company, even if they had a right to delegate a power so important and discretionary. For that reason, the Supreme Court of Missouri held the assessment void. Clearly this was a question of general law. The plaintiff in error can not make this a Federal question by simply saying in its assignment of errors that the Court failed to give full faith and credit to the charter granted by the Legislature of Connecticut and give this court jurisdiction.

This assignment of error appears nowhere in the record, until the assignments of error in this court. A Federal question can not be raised for the first time by assignments of error in this court.

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123, *l. c.* 134;

Johnson v. New York Life Ins. Co., 187 U. S. 491;

El Paso & S. W. R. Co. v. Eichel, 226 U. S. 590;

Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559.

In Manhattan Life Ins. Co. v. Cohen, 234 U. S., *l. c.*

134, Mr. Chief Justice White, in an opinion of this Court, said:

> "The assignments of errors, however, assert violation of rights under the constitution in many particulars, but none especially with references of this Court in treating the sales of the policies as Texas contracts and refusing to apply the Georgia law, which admittedly differed fundamentally from that of Texas. It is elementary that a Federal question must not be imported into a record for the first time by way of assignments of error made for the purpose of review by this Court. Moreover, as a general rule, it is true that for the purpose of review by this Court rights under the full faith and credit clause, Sec. 1, Article IV, of the Constitution, comes within that class which are required to be expressly set up and claimed in the court below."

UNDER MISSOURI PRACTICE SHOULD HAVE BEEN RAISED BY MOTION FOR NEW TRIAL.

The question that no one except the Board of Directors had authority to make the assessment in question, appears in the record of the trial of this case in the Circuit Court, where the Court, by instruction number 1, required the jury to find that the assessment in question was made by the directors of defendant. In its motion for new trial in the Circuit Court, plaintiff in error did not claim that this violated any constitutional right claimed by it, and no such assignment of error was made in the trial court. Neither was this alleged error assigned in the Su-

preme Court of Missouri. The practice of Missouri requires all errors complained of to be assigned in a motion for new trial to be filed in the trial court within four days after the verdict and judgment.

Revised Statutes of Mo., 1909, Sec. 2025;
McCoy v. Farmer, 65 Mo. 244;
Acock v. Acock, 57 Mo. 155;
Lancaster v. Washington Life Ins. Co., 62 Mo. 121;
Curtis v. Curtis, 54 Mo. 352.

Under the Missouri practice, a constitutional question, whether Federal or state, must be raised at the earliest stage in the proceedings possible under the circumstances. If it can be raised by the pleadings, it must be pleaded. It can not be assigned for the first time in a motion for new trial, if it could have been raised earlier in the proceedings. It can not be raised in the Supreme Court for the first time.

Lohmeyer v. Cordage Co., 214 Mo. 685.

The Supreme Court of the United States has often decided that if a Federal question is not presented before decision by the court of last resort in the state, it can not be presented to that court.

Bollin v. Nebraska, 176 U. S. 83;
Citizens Savings Bank v. Owensboro, 173 U. S. 636;
Winona, Etc., Land Co. v. Minnesota, 159 U. S. 540.

It is not sufficient to make the claim for the first time in a petition for rehearing after judgment, ex-

cept in a case where a high state court has entertained a petition for rehearing containing Federal questions and decided them.

> Mallett v. North Carolina, 181 U. S. 45;
> Mutual Life Ins. Co. v. McGrew, 188 U. S. 291;
> Leigh v. Green, 193 U. S. 79.

In Mutual Life Insurance Co. v. McGrew, 188 U. S. 291, this Court has laid down the rule as follows:

> "Our jurisdiction of this writ of error is asserted under the third of the classes of cases enumerated in 709 (U. S. Comp. Stat. 1901, p. 575), and it is thoroughly settled that, in order to maintain it, the right, title, privilege or immunity relied on must not only be specially set up or claimed, but at the proper time and in the proper way.
>
> "The proper time is in the trial court whenever that is required by the state practice, in accordance with which the highest court of a state will not revise the judgment of the court below on questions not therein raised (Spies v. Illinois, 123 U. S. 131, 31 L. Ed. 80, 8 Sup. Ct. Rep. 21; Jacobi v. Alabama, 187 U. S. 133, 47 L. Ed. 106, 23 Sup. Ct. Rep. 48; Layton v. Missouri, 187 U. S. 356, 47 L. Ed. 214, 23 Sup. Ct. Rep. 137; Erie R. Co. v. Purdy, 185 U. S. 148, 46 L. Ed. 847, 22 Sup. Ct. Rep. 605).
>
> "The proper way is by pleading, motion, exception or other action, part or being made part, of the record, showing that the claim was presented to the Court (Loeb v. Columbia Twp., 179

U. S. 472, 481, 45 L. Ed. 280, 21 Sup. Ct. Rep. 174). It is not properly made when made for the first time in a petition for rehearing after judgment; or in the petition for writ of error; or in the briefs of counsel not made part of the record (Sayward v. Denny, 158 U. S. 180, 39 L. Ed. 941, 15 Sup. Ct. Rep. 777; Zadig v. Baldwin, 166 U. S. 488, 41 L. Ed. 1088, 17 Sup. Ct. Rep. 639). The assertion of the right must be made unmistakably, and not left to mere inference (F. G. Oxley Stove Co. v. Butler County, 166 U. S. 648, 41 L. Ed. 1149, 17 Sup. Ct. Rep. 709).

"If the highest court of a state entertains a petition for rehearing, which raises Federal questions, and decides them, that will be sufficient (Mallet v. North Carolina, 181 U. S. 589, 45 L. Ed. 1015, 21 Sup. Ct. Rep. 730); or if the Court decides a Federal question which it assumes is distinctly presented to it in some way."

The plaintiff in error did not even assign this error in its motion for rehearing in the Supreme Court of Missouri. Only two grounds appear in the motion: First, that the decision is in conflict with the case of Jones v. Williams, 139 Mo. 1, and that the Court misconceived the facts set forth in the brief accompanying it (Rec., pp. 347-348, appendix this motion, p. 30).

It is true in its brief accompanying said motion plaintiff in error said:

"The quoted provision of the charter that 'All the affairs of said corporation shall be managed and controlled by the board of directors' is that

general provision that is found in many charters (and if not found in the charter itself, is supplied by the general law) that the management and control of the company is generally and finally with the board of directors, whose powers may be and are continuously delegated to the general executive officers or to special officers. What the powers of this company are, and by whom such powers shall be exercised, is a question determinable by the terms of the charter granted by the State of Connecticut, in the light of the law of Connecticut. This charter is of itself a public act, and as such it is entitled to the full faith and credit guaranteed by the constitution of the United States; therefore, the question presented by this paragraph of the opinion, that is, whether the powers exercisable by the corporation must be exercised by the board of directors or maybe some delegated authority of the board, is itself a question which involves the full faith and credit to be given to the public act of Connecticut and is a question that should be determined by the Court *en banc* under the provision of the Constitution of Missouri."

But the foregoing was not part of the motion and it not an assignment of error that the Court failed to give full faith and credit to the charter of plaintiff in error. For the foregoing reasons, we submit that the Court can not take jurisdiction of this cause on this assignment of error because (1) it does not even show color of ground for a federal question

and (2) because the question was not raised in the case below.

IF COURT HAS JURISDICTION MOTION TO AFFIRM SHOULD BE SUSTAINED.

The writ of error in this case was improperly issued, and is founded upon frivolous and unsubstantial grounds, for the reason that this Court has no jurisdiction to pass upon the alleged federal questions, but if the Court has such jurisdiction, then we submit it is the duty of the Court to grant the motion to affirm, because the federal questions, claimed to be involved, are so frivolous and unsubstantial, and have been decided adversely to the contention of plaintiff in error so often by this Court that they were conclusively established to be without merit when this writ of error was sued out, and for that reason that the petition for a writ of error in this case must necessarily have been made for the purpose of delay.

Section 2 of Rule 23 of the rules of this Court provides that in all cases where the writ of error shall delay the proceedings on the judgment of the inferior court and shall appear to have been sued out merely for delay, damages at a rate not exceeding 10 per cent, in addition to interest, shall be awarded upon the amount of the judgment. The defendant in error claims she is entitled to these damages, in addition to the interest and the costs of this motion, because the federal questions set up are so manifestly frivolous and unsubstantial that it must necessarily follow that the writ was petitioned for solely for the purpose of delaying the collection of the judgment.

In the case of Deming v. Carlisle Packing Co., 33 Sup. Ct. Rep. 80, this Court says:

> "The conclusion that a writ of error from the Federal Supreme Court to a state court has been prosecuted for delay is the necessary inference from an order of dismissal because of the unsubstantial and frivolous character of the only asserted Federal question.
>
> "The power to award damages for delay gives authority to exert that power where in form there is no judgment of affirmance, but only an order for the dismissal of a writ of error to a state court because of the unsubstantial and frivolous character of the asserted Federal right."

In Chanute City v. Trader, 132 U. S. 212, in quoting from an earlier case, this Court says:

> "Our experience teaches that the only way to discourage frivolous appeals and writs of error is by the use of our power to award damages, and we think this a proper case in which to say that hereafter more attention will be given to that subject, and the rule enforced both according to its letter and spirit. Parties should not be subject to the delay of proceedings for review in this court without reasonable cause, and our power to make compensation to some extent for the loss occasioned by an unwarranted delay ought not to be overlooked."

The husband of defendant in error paid his regular assessments to plaintiff in error for about twenty years, and it is claimed failed to pay one assessment,

and died. The forfeiture of the policy is sought by defendant in error on this technical ground. The record establishes the fact that the assessment in question was not legally and lawfully levied, by anyone who had authority to levy it; that the same was excessive, and for that reason was void; that defendant had in its hands more than sufficient funds to pay every death claim for which the alleged assessment was made at the time the assessment was made. All of the equities are in favor of defendant in error, and if, for any reason, technical or otherwise, the assessment was invalid, the policyholder, of course, was not compelled to pay it, and the insurance was not forfeited.

Defendant in error has been delayed in the collection of her insurance, taken out by her husband, as a protection in her old age, for more than seven years, although she brought her suit promptly and recovered judgment before each court to which plaintiff in error has compelled her to go. She has been put to wholly unnecessary expense in contesting the frivolous writ of error, issued at the instance of plaintiff in error, and where the judgment is as small as it is in this case, defendant in error should not be obliged to assume the whole burden of that additional expense, when it is occasioned by the unjustified conduct of plaintiff in error. Upon this record there is no legal reason why this insurance should not have been paid promptly, and the fact that the plaintiff in error agreed with the insured to protect his widow after death, and refused to do it, puts the moral claim upon defendant in error beyond question.

Respectfully submitted,

CHARLES E. MORROW,

Attorney for Defendant in Error.

In the Supreme Court of the United States.

October Term, 1917.

The Hartford Life Insurance Company,
Plaintiff in Error,
vs.
Rosa Barber,
Defendant in Error.

No. 633.
(25463)

MOTION TO DISMISS OR AFFIRM.

Now comes the defendant in error herein by Charles E. Morrow, her attorney, appearing in that behalf, and moves this Court to dismiss the writ of error in the above-entitled cause for want of jurisdiction on the grounds stated in the annexed brief of argument.

And the said defendant in error, by her attorney, as aforesaid, also moves the Court to affirm the judgment, which is brought before this Court by writ of error issued to the Supreme Court of the State of Missouri, on the ground that, although the record in said cause may show that this Court has jurisdiction in the premises, yet it is manifest that the said writ of error was sued out for delay only, and that the questions on which the decision of the cause depend are so far frivolous as not to need further argument.

Said defendant in error, by said attorney, also moves the said Court for damages under Rule 23 of the rules of said Court, and for interest upon the judgment and costs of these motions.

CHARLES E. MORROW,
Attorney for Defendant in Error.
Pierce Building,

St. Louis, Missouri.

To James C. Jones and Frederick W. Lehmann,
Attorneys for Plaintiff in Error.

Sirs:

Please take notice, that on Monday, October 1st, 1917, at the opening of said court, at the Capitol in the City of Washington, in the District of Columbia, or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies, will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Annexed hereto is a copy of the brief of argument and transcript of the record, to be submitted with said motions in support thereof.

St. Louis, Mo., September 1, 1917.

Yours respectfully,

CHARLES E. MORROW,
Attorney for Defendant in Error.
Pierce Building,
St. Louis, Missouri.

APPENDIX.

SUPREME COURT OF THE UNITED STATES.

October Term, 1917.

The Hartford Life Insurance Company,
Plaintiff in Error,
vs.
Rosa Barber,
Defendant in Error.
No. 633.

ON WRIT OF ERROR TO THE SUPREME COURT OF MISSOURI.

In the following portions of the record, here set out, the title, caption and signatures are omitted.

ASSIGNMENT OF ERRORS.

Plaintiff in error, the Hartford Life Insurance Company, of Hartford, Connecticut, complains of Rosa Barber and says that there is manifest error in the record and proceedings in the above entitled cause and in the decision and judgment of the Supreme Court of the State of Missouri, in this, to-wit:

I.

The Supreme Court of Missouri failed and refused to give full faith and credit to a decree of the Superior Court of New Haven County, Connecticut, a court of

record of the said state, in the case of Charles H. Dresser *et al.* v. The Hartford Life Insurance Company *et al.* (Curtis, J.), duly exemplified under and in accordance with the Act of Congress, in which case there was involved and decided a controlling fact material to the determination of this cause, contrary to and in violation of Article IV, Section L of the Constitution of the United States.

II.

The Supreme Court of Missouri failed and refused to give full faith and credit to a decree of the Superior Court of New Haven County, Connecticut, a court of record of the said state in the case of Charles H. Dresser *et al.* v. The Hartford Life Insurance Company *et al.* (Shumway, J.), duly exemplified under and in accordance with the Act of Congress, in which there was involved and decided a controlling fact material to the determination of this cause, contrary to and in violation of Article IV, Section 1, of the Constitution of the United States.

III.

The Supreme Court of Missouri erred in failing and refusing to give full faith and credit to a public act and record of the State of Connecticut, to-wit, the legislative charter granted by the Legislature of the State of Connecticut, contrary to and in violation of Article IV, Section 1, of the Constitution of the United States.

IV.

The said Supreme Court of Missouri erred in not holding that the failure of the insured to pay his quarterly dues worked a forfeiture of the policy, in accordance with the terms of the contract sued on.

V.

The said Supreme Court of Missouri erred in not holding that the failure of the insured to pay his quarterly assessment worked a forfeiture of the policy in accordance with the terms of the contract sued on.

VI.

The said Supreme Court of Missouri erred in adding a condition or qualification to the decrees of Shumway, J., and Curtis, J., of the Superior Court of New Haven County, Connecticut, in the case of Dresser *et al.* v. The Hartford Life Insurance Company *et al.*, and to the charter of the plaintiff in error, by holding that the assessment could not be levied by officers of the plaintiff in error and that said assessment should have been levied by the board of directors, whereas neither said Connecticut decrees in the case of Dresser *et al.* v. The Hartford Life Insurance Company *et al.*, as aforesaid, nor the charter of the plaintiff in error, require that assessments should be levied by the board of directors of the plaintiff in error, and it being no part of said decrees or of the charter of the plaintiff in error that the assessments should be levied by the board of directors, the Supreme Court of Missouri has by such added requirement denied to said decrees and to the charter of the plaintiff in error the full faith

and credit to which they are entitled under Article IV, Section 1, of the Constitution of the United States.

VII.

The Supreme Court of Missouri erred in holding that the officers of the plaintiff in error could not levy the assessment, but that the same should have been levied by the directors of the plaintiff in error for the following reasons:

First. Because the charter of the plaintiff in error does not require or specify that the directors of the plaintiff in error should make and levy the assessments;

Second. Because the evidence shows that the directors of the plaintiff in error had delegated to the officers the power and authority to levy the assessments.

VIII.

The judgment of the Supreme Court of Missouri deprives the plaintiff in error of its property without due process of law, contrary to Section 1, of the Fourteenth Amendment to the Constitution of the United States, for the reason that the statute of the State of Missouri (Section 7068 of the Revised Statutes of Missouri for 1909), and the course of judicial construction thereof by the courts of Missouri, authorizing the imposition of damages and attorneys' fees, permits and authorizes the taking of property by pretended process of law which is not actual process of law in that it permits the taking of private property without notice, plea, proof or an opportunity to be heard and to have a judicial inquiry before the

property is adjudged to be taken, and because the condition on which the statute says the property may be taken, *i. e.*, "vexatious delay," is not required to be pleaded or proven.

IX.

The Supreme Court of Missouri erred in holding that at the time the assessment was levied the plaintiff in error had a "permanent fund on hand to the amount of $375,764.79 or nearly $76,000.00 in excess of the amount authorized by the Connecticut court." This statement is without foundation in the record and is against the undisputed evidence in the case, and because of such holding the plaintiff in error was denied the right to have full faith, credit and effect given to the judgment of the Superior Court of New Haven County, Connecticut, in the said Dresser case.

X.

The Supreme Court of Missouri erred in holding that "the assessment was levied by its express terms to pay one hundred and nineteen death losses therein enumerated, amounting to $332,378.48." This statement is contrary to the provisions of the contract that the assessments under this certificate are levied to replenish the mortuary fund (not to pay death losses), it is contrary to and fails to give full faith and credit to the decrees of the Superior Court of New Haven County in the Dresser case, and it is contrary to the holding and opinion of the Supreme Court, in the case of The Hartford Life Insurance Co. v. Ibbs, 237 U. S. 662.

XI.

The Supreme Court of Missouri erred in holding that the credit of $1.40 allowed on assessment or Call No. 126, "is Barber's share of the excessive compensation taken by the security company for the care of the safety fund." This statement is without foundation in the record and is against the undisputed evidence in the case.

XII.

The Supreme Court of Missouri erred in its holding with reference to the Safety Fund that "at the time herein of the assessment in question the principal of this fund amounted to $1,166,354.29". This statement is without foundation in the record and is against the undisputed evidence in the case.

XIII.

The Supreme Court of Missouri erred in holding that Section 7068, Revised Statutes of Missouri for 1909, as construed by the courts of Missouri, is constitutional, and in refusing to hold that said statute as construed by the courts of Missouri deprives the defendant of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XIV.

The Supreme Court of Missouri erred in affirming the judgment of the court below, which included an allowance to plaintiff by way of damages and attor-

neys' fees, because Section 7068, Revised Statutes of Missouri for 1909, which authorizes the imposition by the Court or jury of such damages and attorneys' fees against an insurance company for its vexatious refusal to pay the amount of said policy, as construed by the courts of Missouri, and in its application to the facts in this case deprives the defendant of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that there is no evidence in this case that the refusal of the plaintiff in error to pay to the defendant in error the amount of the certificate in suit was vexatious.

For which errors the plaintiff in error prays that the judgment of the Supreme Court of the State of Missouri, dated March 30, 1916, be reversed, and that the cause be remanded, with such directions as according to law and justice shall seem proper to this Court.

OPINION SUPREME COURT OF MISSOURI.

In the Supreme Court of Missouri, Division No. 1.

October Term, 1915.

Rosa Barber,
Respondent,
vs.
Hartford Life Insurance Company,
Appellant.
No. 17,664.

Appeal From the Circuit Court for Johnson County.

Statement.

This is an action at law on policy No. 174,416 issued by the defendant September 4, 1893, insuring the life of Frank Barber for $2,000.00 for the benefit of the plaintiff, who was then his wife and is now his widow, and for damages for vexatious refusal to pay the loss under the provisions of Section 7068 of the Revised Statutes of 1909. Mr. Barber died June 5, 1910. There was a judgment in the Circuit Court for $2,976, including $200.00 damages and $500.00 attorneys' fee awarded by the jury for vexatious refusal to pay, from which this appeal is taken. The defendant is a life insurance company of Connecticut. It had a business department called the "Safety Fund Department", which was again divided into the "Men's Division" and "Women's Division", which issued policies payable on the assessment plan, and this

policy was, of course, in the "Men's Division", and was called a "Certificate of Membership Safety Fund Department".

The answer pleads that this certificate was conditioned upon the payment of periodical assessments; that on January 29, 1910, an assessment designated as "Call 126" was levied on it against Barber for $13.00 with dues amounting to $1.50, which became due by the terms of the certificate on March 1, 1910; that Mr. Barber failed to pay it on or before March 20th, to which time it had been extended; and in consequence thereof the insurance was, by the terms of the certificate, forfeited. The issues in the case grow out of this circumstance. It also pleads, in effect, that an action had been brought in the New Haven County Superior Court of Connecticut, by one Dresser, holding a similar certificate of membership in the Safety Fund Department of defendant, on his own behalf, as well as on behalf of all others similarly situated, including the plaintiff, wherein the rights of plaintiff were fully adjudicated; that the mortuary fund of said department and the trust thereby created is being administered strictly in accordance with the terms of said certificate and trust as construed and adjudicated by said court, whereby defendant is without authority to pay out of said mortuary fund the amount of any certificate of membership where, as in this case, the member has failed or refused to pay the assessment levied against him to maintain said fund. It also denied the right of plaintiff to recover the damages and attorneys' fee sued for, because the provisions of said section 7068 authorizing the imposition of such damages and attorneys' fee are unconstitutional and void as being in violation of Section 10,

Article I of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment thereto, and of Section 30 of Article II and of Section 10 of Article II of the Constitution of Missouri; and because the construction thereof by the courts of this state constitutes a rule of judicial construction violative of said provisions of the State and Federal Constitutions, and because said section 7068, if applied to this case, and its application to the facts of this case, denies the defendant due process of law as guaranteed by the State and Federal Constitutions.

These matters were all put in issue by replication.

The defendant on the trial offered in evidence the record in the Dresser case duly certified under the Act of Congress in such cases made and provided, which was, on plaintiff's objection, excluded; to which defendant duly excepted.

The policy sued on, so far as applicable to the questions in this case, is as follows:

> "In consideration of the representations, agreements and warranties made in the application herefor, and of the admission fee paid; and of three dollars per annum on each $1,000 of the indemnity herein provided for, for expense dues, to be paid as hereinafter conditioned, and of the further payment of all mortality calls proportioned to the said indemnity, levied against the herein-named member to form a mortuary fund for the payment of all indemnity matured by deaths of members, and to create a safety fund as hereinafter described, which mortality calls, to be levied upon all the members in the department wherein this certificate is issued whose cer-

tificates are in force at the date of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity of such deaths, with due allowance for discontinuance of membership (one-third of the proceeds of such mortality calls to be applied toward said safety fund until the sum of ten dollars on each $1,000 indemnity shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon) does hereby issue this certificate of membership in its Safety Fund Department to Frank Barber (herein called the member) of **St. Louis** County, of **City of St. Louis**, State of **Missouri**, with the following agreements:

"That ninety days from the receipt by the president or secretary of said company of satisfactory proofs, in accordance with forms furnished upon notice of death and with full information as to the manner and cause of the death of the herein-named member while this certificate is in force, all the conditions hereof having been conformed to by the member, upon presentation and surrender of this certificate properly receipted, there shall be due and payable, out of the aforesaid mortuary fund and not otherwise, the indemnity of two thousand dollars (less the balance unpaid, if any, of the stipulated contribution to said safety fund, with fifty per cent added, together with the unpaid installments of annual expense dues and any mortality or other charge against the member, payment of which is not

matured), to his wife, Rosa Barber, if living, otherwise to his legal representatives. All such payments to be made at the home office of said company in lawful money of the United States.

"That said company will deposit said sum of ten dollars, when received, with the trustee, named in a contract with it (of which a copy is printed hereon), as a safety fund in trust for the uses and purposes expressed in said contract; and shall make a semi-annual division of the net interest received therefrom by it *pro rata* among all the holders of certificates in force in said department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said fund, by applying the same to the payment of their future dues and assessments; and that, whenever said fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said company in like manner as the interest."

The department in which this certificate was issued was organized about 1879, on the following plan: Each person applying for insurance under the plan was to pay an admission fee of $8 for $1,000, $12 for $2,000, $15 for $3,000, $18 for $4,000, $20 for $5,000, $40 for $10,000, and the medical examination fee estimated at $3 to be paid to the physician; also to pay annually for the sole purpose of paying all expenses of said insurance $3 for each $1,000 of insurance; and also to pay as mortuary payments assessed to pay death losses an amount graduated ac-

cording to the policyholders' age at the time of the assessment, the amount of his policy and the aggregate indemnity in force with the company at the time of each death, with due allowance for discontinuance of membership, one-third on each call to be applied toward a safety fund until the sum of $10 per $1,000 had been paid, "when the basis of all subsequent mortality calls shall be two-thirds only" of the amount named in the table endorsed on the certificate. This safety fund was to be deposited with the "Security Company", a corporation formed to take care of it for an additional compensation out of this income. The earnings of this fund after it should reach $300,000 and all contributions to it after it should reach $1,000,000 in United States bonds, par value, were to be divided among certificate holders of five years' standing in proportion to the amount of their certificates, and if the aggregate amount of the certificates should fall below $1,000,000 the principal of the fund should be similarly divided. The fund accumulated rapidly, and in 1889 the Security Company had ceased to buy United States bonds, and in that year, notwithstanding its contract with policyholders, the appellant secured the passage of a resolution by the Legislature of Connecticut authorizing the investment of the fund in other securities. Under this permission the fund was invested in other securities, including stocks of the New York, New Haven & Hartford and St. Joseph, Denver City & Southern railroad companies and of Hartford banks. In 1899 they ceased the issue of certificates in this department and thus practically put an end to the influx of ten-dollar contributions which, the fund having reached its maxi-

mum of one million, must be divided among the certificate holders. Things were in this condition when the Dresser suit was instituted in 1907 and went to final judgment March 23, 1910. The Court ruled that the Act of 1889 was unconstitutional and void as impairing the obligation of the contract of the company with the certificate holders and found that as a result of investments in other securities than United States bonds losses had been incurred so that the actual value of the fund remaining was somewhat less than $1,000,000; that excessive charges had been made by the Security Company for its management, so that the Court required over $40,000 of this compensation to be returned and distributed to the certificate holders. It also found that, although the company had levied assessments to cover the full amount of the certificates for each death during the previous quarter, they deducted, in making payment, from the face of such certificates a certain proportion of the assessment that would have been due from the holder had he survived the quarter, so that there was a margin arising between the amount of the losses paid and the amount of losses assessed for, which had accumulated in the mortuary fund and had been used for the payment of losses in advance of the receipt of the assessments by which it was reimbursed. This accumulation amounted to "many thousands of dollars", which belongs to the certificate holders. The Court held that it was proper that the defendant should hold some such fund for the purpose of enabling it to pay losses promptly, but that it was not necessary that the company should hold more than the amount of

one average quarterly assessment for the previous year.

After reciting these facts the judgment proceeded:

> "Whereupon it is adjudged and decreed, that said mortuary fund of the Men's Division arising from the excess of the amount received for quarterly assessments over the amount necessary for the payment of losses for said quarter, as above described, or from any other sources, together with all income or interest thereon, belongs to the certificate holders in the Men's Division of the Safety Fund Department, and the insurance company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department. It then ordered that "any excess in said fund above the average of the four preceding quarterly assessments in said Men's Division shall be distributed to the certificate holders **in diminution of assessments.**"

The call in question is as follows:

"HARTFORD LIFE INSURANCE COMPANY.

Hartford, Conn., January 29th, 1910.

Special Notice of Quarterly Call No. 126.

"Your next quarterly call will fall due and be payable June 1, 1910.

Frank Barber,
4201 Pleasant St., 15
St. Louis, Mo.
2-174416

"This call which will be due Mar. 1st, 1910, is made to meet 119 deaths (as shown by accompanying list), benefits, $322,378.48 expenses on your policy, as follows:

For mortality call	$13.09
For quarterly dues to June next	1.50
Credit	$14.59
Dividend to be applied if payment be made	1.40
Amount due	$13.19

"Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

"Unless the payment called for by this notice shall be paid to the company at its home office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

"Return this notice with remittance payable to Hartford Life Insurance Company.

"Make all remittances by draft, check, P. O. or express money order when possible. Letters containing currency must be registered.

"See over for special notice.

"Special Notice.

"If the payment of the above Quarterly Call is not received at this office on or before Mar. 5,

1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policy-holder by registered letter, giving until Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

"Every member whose payment does not reach this office on or before Mar. 5, 1910, will be obliged to pay fifty cents fee in order to have the policy unconditionally reinstated.

"After Mar. 20, 1910, the limit allowed for payment under the registered notice, the company reserves the right to require a medical examination as a condition of reinstatement."

The credit of $1.40 is Barber's share of the excessive compensation taken by the Security Company for the care of the safety fund. The amount of this fund for which charges were being made up to and at the time of the Dresser trial, was more than $1,000,000.

The assessment in question was made as of December 31, 1909. At that time all of the 119 death losses enumerated in the notice had been paid except fifteen, aggregating $41,000.00, and there was remaining in the mortuary fund $74,938.92; and the interest on the safety fund was paid into it on the same date, making an aggregate of $94,386.31 then in the fund. The defendant introduced evidence showing that there were unpaid death losses amounting to $128,166.67, or more than $87,000.00 in addition to those included in this assessment still unpaid, and accounted for this fact by saying that the time of payment of losses included in the previous assessment had been ex-

tended, so that the collections for the payment of these losses had not yet been made.

The appellant asked upon the trial and the Court refused an instruction to the effect if there was no evidence that the refusal of the defendant to pay the sum sued for was vexatious, and for that reason they should not allow any sum for damages or attorneys' fees should they find for the plaintiff. It also, both upon the trial and in its motion for a new trial, contended that the action of the Court in excluding the record in the Dresser case violated Section 1, Article IV, of the Constitution of the United States providing that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Such further reference will be made to the record as seems to be necessary.

Opinion.

1. The defendant pleaded in its answer that the provision of Section 1768 of the Revised Statutes of Missouri, 1909, was unconstitutional and void and therefore could not be made the basis of any recovery for damages and attorneys' fees in this suit. This claim has been rejected by this Court and the Supreme Court of the United States until it has become too stale to serve as a foundation for our jurisdiction (Keller v. Home Life Insurance Co., 198 Mo. 440; Fidelity Mutual Life Association v. Mettler, 185 U. S. 308; Iowa Life Insurance Co. v. Lewis, 187 U. S. 335; Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301; Fraternal Mystic Circle v. Snyder, 227 U. S. 497). It is probably in view of these repeated

decisions and others to the same effect that the appellant has not favored us with a brief or argument upon this point.

Our jurisdiction rests solely upon the point that the trial court erred in rejecting the record of a judgment of the Superior Court of Connecticut for New Haven County in the case of Ibs and others, holders of like certificates in the safety fund department of defendant, suing on behalf of themselves and of all others similarly situated, vs. this defendant, the Security Company named in the certificate here sued on, together with the members of the board of directors of defendant for the time being. This case went to final judgment in the Connecticut Court March 23, 1910. By this judgment the Court attempted to make some radical changes in the contract here sued on, and this attempt, applicable to this case in some respects which we shall notice, has received the indorsement of the Supreme Court of the United States in Hartford Life Insurance Company v. Ibs, 237 U. S. 662.

The grounds upon which the plaintiff objected to the admission of this record were many, but its exclusion fairly raised the constitutional question whether or not, in that action, full faith and credit was given to the record of a judicial proceeding in the Connecticut Court as required by the Federal Constitution. Among these objections were some relating to its certification and completeness, but these are shown to have been groundless by an additional abstract. Objection was also made that the judgment was not properly pleaded as an adjudication by the Connecticut Court of the matter involved. This objection would probably have been well taken

had it been directed against the answer before trial, but its effect, so far as applicable to the case, was generally stated and ought not to have been allowed to interfere with the trial by forcing an amendment during its progress. We think the constitutional point was well taken and shall consider the case in the light of the rejected evidence.

2. The legal maxim that the law abhors a forfeiture carries with it its own reasons. One who, like this respondent, has for seventeen years regularly contributed to a fund for the indemnity of others, ought not to be deprived of all the benefit which he himself was to receive as his compensation otherwise than by the honest performance of all the conditions upon which he had agreed to surrender it. He has placed himself in the hands of others who for their own profit have assumed the duty of his protection, and they can have no right to take his money and refuse the protection other than the right which grows out of the strict performance of their own undertaking; and where, as here, they seek after his death to appropriate to themselves the benefit of the insurance for which he has stipulated because of his failure to pay an assessment against him, it is but just that they should show that there was such an assessment, and that it is a liability which he had bound himself by his contract to pay. The burden falls justly upon them to show a performance as strict and literal as the performance they seek to exact from him. This is not a favor which the law grants him, but simply the fair and equal treatment to which every one is entitled before the law, which abhors an injustice. The assessment is the ground of his liability, and until it is shown to have been

made in accordance with the contract he can not be deprived of the indemnity which the contract gives him (Hannum v. Waddill, 135 Mo. 153; Settle v. Insurance Association, 150 M. A. 520, 528; Wayland v. Indemnity Co., 166 M. A. 221; Earney v. Modern Woodmen, 79 M. A. 385; King v. Hartford Life Insurance Co., 133 M. A. 612; Craig v. Insurance Co., 136 M. A. 5; Baker v. Insurance Co., 51 Mich. 243; Insurance Co. v. Comfort, 50 Miss. 662; 2 Cooley's Briefs on Insurance, pp. 1871-2).

3. The defendant does not contend that an assessment should be made for the payment of a death loss until such a death has occurred (Bacon on Benefit Societies and Life Insurance, Sec. 377). But it says that this rule was modified by the decree of the Connecticut Court in the Dresser case. It is therefore necessary to examine the policy in connection with that decree to ascertain the powers of appellant in this respect, and in doing so we must consider the various funds involved in the inquiry. The defendant company seems to have had a checkered career. It was organized under an Act of the Connecticut Legislature in 1866, as the "Hartford Accident Insurance Company". The next year its name was changed to the "Hartford **Life** and Accident Insurance Company", and the next year (1868) it was again changed to the Hartford Life and Annuity Insurance Company and authorized to "make contracts, upon any and all conditions appertaining to or connected with life risks, annuities and reversionary interests of whatever kind and nature". It then became a full-fledged Life Insurance Company. Its business kept pace with these changes, and in 1879 it reduced its capital stock and organized the Safety Fund De-

partment in which these policies were issued, and continued to write that kind of insurance until 1899, when it ceased to issue such policies, but has continued to administer the funds created under their terms. The plan was the same as that expressed in the policy sued on. Each certificate holder contributed $10.00 per $1,000.00 of insurance to form the "Safety Fund", which was to be held and administered by a corporation formed by themselves called the "Security Company". When the fund reached $300,000.00 its income was to be distributed among the policy holders according to the amount of insurance held by each, by applying it in reduction of their future assessments. It was to be invested in United States bonds and when it reached the sum of $1,000,000.00 "in United States bonds" no further accumulation was to be made, but all future payments by policy holders of the $10.00 per $1,000.00 required for that fund were to be divided among policy holders of five years standing and applied to reduce assessments the same as the interest. Although the fund reached the magnitude of $1,000,000.00, it never reached that amount in United States bonds, but was invested in other securities, including railway and bank stocks and irrigation bonds. At the time of the assessment here in question the principal of this fund amounted to $1,166,354.39. How much it had been depleted by losses up to that time does not appear. The income of it is, under the contract contained in the policies, paid into the mortuary funds semi-annually, and distributed in reduction of mortality assessments.

There is one more fund which is material in this controversy. It will be seen from the terms of this

certificate that upon payment of a death loss "any mortality or other charge against the member, payment of which is not matured" is to be deducted. In other words, if he died after the close of the assessment quarter and before payment of the assessment was due, the entire assessment was to be deducted. If before the end of the quarter only the *pro rata* amount up to the time of his death was to be deducted from the amount of the indemnity paid. In this way each assessment was excessive to that extent, and the excess, amounting to "many thousands of dollars", together with the surplus resulting from the over-estimate of probable lapses, all of which was applicable to the payment of mortality assessments had, at the time of the Dresser judgment, been kept in the mortuary fund for the payment of death losses in advance of the assessments, and this constituted the fund for the prompt payment of losses which the Connecticut Court had in view when it entered the judgment. It was a fund being continually replenished at the occurrence and payment of each death loss, and the same fund about which it said in its judgment:

> "The plaintiffs claim it was improper and wrongful to accumulate these **margins** and to carry this balance in said mortuary fund, and claimed that said balance of **margins** should be distributed amongst the outstanding certificate holders, but it held that it is proper and reasonable that the company should hold **some such fund** for the purpose of enabling it to pay losses promptly, but that it was not necessary for that purpose that the company should hold more than

the amount of one average quarterly assessment for the previous year."

It is plainly seen from an attentive reading of this judgment that the Court did not have any idea of undertaking to make a new contract for these certificate holders or to change the old one. It had no more right to do this than did the legislature, and asserted no such right, but it found this fund present in the mortuary fund; it was a flexible one because replenished by each death loss, and it considered it proper that it should be used for any lawful purpose connected with the fund from which it had been taken by a slight and perhaps necessary safety margin in the assessment for each loss; and it was proper, in the estimation of the Court that such part of it as should be reasonable and necessary, not to exceed the amount of the average assessment for the next preceding year, should be used for the prompt payment of losses and that the remainder should be used in reduction of the succeeding assessment.

In the light of these three funds, that is to say, (1) the fund proceeding directly from the regular quarterly assessments to pay the losses for which they are made; (2) the interest on the safety fund; and, (3) the "margins" referred to in the Dresser judgment, we will examine the assessment for the last quarter of 1909 embodied in call 126.

The average amount of the quarterly assessments for the preceding year had been $300,000.00, to which amount the defendant was limited by the judgment in maintaining this emergency fund. The assessment was levied by its express terms to pay 119 death

losses therein enumerated, amounting, in benefits, to $322,378.48. On December 31, 1909, the last day of the quarter for which it was levied, all these losses, except 15, amounting to $41,000.00, had been paid out of the fund on hand and there remained $74,-938.92. On the same day there had been paid into the fund from the income account of the safety fund, $19,447.39, making the amount left on hand $94,386.31. Deducting from this $41,000.00, the amount of the 15 unpaid losses, left $53,386.31. In other words, the payment of all losses for which this was to be made, left the last-mentioned amount on hand in the fund, to be "replenished" by the $322,387.48. This left a permanent fund on hand to the amount of $375,764.79, or nearly $76,000.00 in excess of the amount authorized by the Connecticut Court and which represents the amount of excess above that authorized by the contract as modified by the judgment.

When this appeared in its evidence the defendant attempted to explain by the statement that there were other death losses which had accrued up to and including that day, bringing the total amount unpaid up to $128,000.00 in round numbers. Were this true, and the proofs in the hands of the Company, they should have been included in that assessment, but no claim is made that they belonged there. If the death had occurred before that date and no proof had been furnished the company, the fund would be "replenished" to that amount in the next assessment, so that they would have no influence whatever in determining the amount of call "126", but could be promptly paid out of the surplus that call would

leave on hand. It is intimated, however, that the $87,000.00 of these losses not included in call 126 had been included in previous assessments, the payments upon which had been extended out of kindness to the certificate holders, and this suggestion is given color by the report of defendant filed in the Insurance Department of Missouri as of that day, in which the following item appears:

"Net premiums in course of collection safety fund department, $185,000.00", and as this included both the Men's and Women's Division of that fund, it would probably account for the proportion of such pending collections in the Men's Department. For this, an assessment had already been made which should be added to the amount of call 126 as a means of replenishing the fund. Its inclusion in this transaction in any other form would be in plain violation of the terms of both the policy and judgment.

It follows that the appellant, instead of sustaining the burden of proving a valid assessment as a foundation for the forfeiture of this policy, has shown a grossly excessive one made without authority either in the contract or the judgment in the Dresser case, and, in pursuance of a policy which runs like a sordid thread through the record, of accumulating large funds at the expense of the policy holders, and withholding them as long as possible from distribution. When we consider that in addition to what it received out of the income of these funds it was collecting at the time this assessment was made, and receiving as compensation for the conduct of this remnant of an abandoned business about eighty-five thousand dollars per year from the policy holders, we

can see no excuse for extortion. We do not think a forfeiture can stand on the foundation of this assessment.

3. The appellant in argument contends that the policy was properly forfeited for non-payment of ten cents, a balance which it claims to have been due on the following figures: It charged Mr. Barber one-fourth of his annual dues under the policy for expenses—$1.50. The Court in the Dresser decree had ordered that $40,046.36 illegally withheld from the policy-holders on account of excessive fees exacted for the care of the safety fund should be returned to them. On this account $1.40 was credited as the share running to this policy, leaving ten cents due in addition to the assessment for mortuary purposes. The policy, in this respect, runs as follows: "In consideration of * * * three dollars per annum on each $1,000 of the indemnity herein provided for, expense dues, to be paid as hereinafter conditioned." The policy is dated September 4, 1893. On the next page are the "conditions", which, with respect to this payment, are as follows: "The member agrees to pay to said company, for expenses, dues of three dollars per annum on each $1,000 indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; or by *pro rata* installments of the same, in advance, for periods of less than a year." We have searched this voluminous record carefully for any evidence of any other arrangement. This was by the terms of the policy due on October first of each year and we see nothing in the provision we have quoted which gave the appellant the right at its own election, and without the consent of the policy-hold-

ers, to make it otherwise payable. The forfeiture can not stand on this ten cents.

4. In all the mutations which the appellant has undergone at the hands of the Legislature there are some things in its original charter which seem to have remained intact. One of them provides: "**All the affairs of said** corporation shall be managed and controlled by a board of not less than seven directors (The number of said directors to be determined by the by-laws of said company)" and the other vests the power to make by-laws in the stockholders. It is not contended by the appellant that this assessment was made by the directors or by any committee appointed by the directors, or in accordance with any rule prescribed by them, or that it ever passed under their observation as a board, or was ever spread upon the corporate records. Nor is it contended that there is any by-law prescribing the method of levying the assessment. The action of the company in making assessments involved the use of the highest discretion. It claimed the right, in the performance of that act, to determine an amount to be kept on hand for the payment of all such losses as might occur immediately upon the receipt of the proof and independently of any assessment therefor. The levying of these assessments and the determination of the amount of this fund which was limited only by circumstances of which it was required to judge, subject only to the maximum prescribed in the Dresser judgment, were the highest and most important acts and involved the largest discretion of any which related to the class of insurance to which its activities were mainly directed during the twenty years preceding 1899. If the legislative direction that **all** its affairs

were to be managed and controlled by their direction did not include this, it would be difficult to say what it did include. It evidently means more than the appointment of the usual officers of such corporation. Under these circumstances we think the executive officers of the company were without power to determine these things and to levy these assessments otherwise than under their direction to be shown by its records (Bacon on Benefit Societies and Insurance, Sec. 377; Farmers' Milling Co. v. Insurance Co., 127 Iowa 314; Insurance Co. v. Chase, 56 N. H. 341; Garretson v. Equitable M. L. Ass'n, 93 Iowa 402).

We have examined the cases referred to by appellant and note that the Fee case (110 Iowa 271, is necessarily overruled by the Millard case, *supra*, 127 Iowa 314); and Miles v. Life Ass'n, 108 Wis. 321, construed a charter so different from the one we are considering as to make it entirely inapplicable to this case. The same may be said of Insurance Co. v. Brinbaum, 116 Pa. St. 565. There is nothing in either of these cases tending to disapprove the position we have taken.

5. The submission of the question of damages and attorneys' fees to the jury was proper under the rule stated by this Court in Keller v. Home Insurance Co., 198 Mo. 440, and Brown v. Insurance Co., 45 Mo., *l. c.* 227, where it is said that

> "the whole question of vexatious refusal or delay is a matter of fact to be determined by the jury. They must make up their verdict on this issue by a general survey of all the facts and circumstances in the case; and if, upon full consideration, they conclude that the refusal was unjusti-

fiable and vexatious, the law authorizes them to assess the damages. The statute will not admit of the construction contended for by the counsel for the plaintiff in error, that before damages were allowed it must be explicitly proved by the plaintiff that the delay or refusal was vexatious."

We think that under this rule the evidence was ample to justify the submission of that question, and that the instruction of the Court properly defined the duty of the jury. There having been no error in this and the appellant having failed to sustain the burden of showing or presenting evidence tending to show the levy of a legal assessment in the matter of "call 126", for the non-payment of which it seeks to forfeit the policy sued on, the judgment of the Circuit Court is affirmed.

Railey, C., not sitting.

Stephen S. Brown,
Commissioner.

Per Curiam: The foregoing opinion of Brown, C., is adopted as the opinion of the Court. All concur.

APPELLANT'S MOTION FOR REHEARING.

Now comes the appellant and moves the Court to grant it a rehearing in the above-entitled cause because the opinion is in conflict with a controlling decision of the Court *en banc*, to wit, the decisions in the case of Jones v. Williams, 139 Mo., page 1, to which the attention of the Court was not called, through neglect or inadvertence of counsel, and for

the further reason that the Court has misconceived the facts in this record and, in its opinion, erroneously stated the facts in the particulars set forth in the following brief thereof:

Jones, Hocker, Sullivan & Angert,
Attorneys for Appellant.

AMENDED PETITION.

Plaintiff for her amended petition for her cause of action against the defendant states that said defendant is a corporation duly incorporated according to law and at all times herein stated was engaged in the business of life insurance in the State of Missouri.

That at the time the contract or policy of insurance was entered into by defendant as hereinafter stated the corporate name of defendant was The Hartford Life and Annuity Insurance Company; that since said contract was entered into defendant has changed its name and is now doing business under the corporate name of the Hartford Life Insurance Company.

On the 4th day of September, 1893, the defendant, in consideration of the payment by Frank Barber of a certain sum of money and in consideration of the agreement by the said Frank Barber to pay it thereafter certain sums of money as the same might become due, executed and delivered to said Frank Barber a certain contract or policy of insurance whereby it agreed to pay upon the death of said Frank Barber to his wife, the plaintiff, if living, the sum of two thousand dollars ($2,000), which said policy is numbered 174416, and is herewith filed.

Plaintiff alleges that said Frank Barber died on

the 5th day of June, 1910; that up to the time of his death the said Frank Barber had complied with all the conditions, stipulations and requirements in said contract on his part to be performed by him.

That in addition to the considerations paid by said Frank Barber hereinbefore mentioned, the said Frank Barber at, or soon after the execution of said con'ract, deposited with defendant the sum of $20.00, which was received by defendant and placed to the credit of said Frank Barber, which has ever since been retained and is now retained by defendant and is now in the custody and under the control of defendant as a deposit. At the time of the death of said Frank Barber that upon said $20.00 deposit certain interest had accrued, which, together with said deposit, was in the hands and under the control of the defendant and at the time of the death of Frank Barber for the benefit of said Frank Barber.

That plaintiff was the wife and is now the widow of said Frank Barber; that since the death of Frank Barber she has complied with all the requirements in said contract required of her; that said defendant, though requested so to do, and though the sum of $2,000.00 is due the plaintiff from defendant, yet so it is the defendant has hitherto vexatiously failed and refused and doth still vexatiously fail and refuse to pay the same, so that the same is now due plaintiff from defendant and remains unpaid.

Wherefore, plaintiff prays judgment against the defendant for said sum of $2,000.00, with interest thereon at the rate of 6 per cent per annum from the .... day of September, 1910, together with the penalty 10 per cent for its vexatious refusal to

pay said money, and also for a reasonable attorney's fee, which plaintiff alleges to be $500.00, with interest, and for costs.

AMENDED ANSWER.

Now comes the Hartford Life Insurance Company, defendant in the above entitled cause, and for its amended answer to the amended petition filed herein

Admits that it is a corporation and that at all times herein stated it was engaged in the business of life insurance in the State of Missouri.

Admits that at the time the contract or policy of insurance was entered into the defendant's name was the Hartford Life & Annuity Insurance Company, and that since said contract or policy was issued the defendant has changed its name and is named the Hartford Life Insurance Company.

Admits that on the 4th day of September, 1893, the defendant executed and delivered to Frank Barber that certain contract or policy of insurance No. 174416, which is filed with plaintiff's petition, but denies that the consideration for the issue of said policy or contract is as set forth in the plaintiff's petition.

Admits that defendant, by said contract or policy, for the consideration and upon the conditions therein named, agreed to pay, upon the death of Frank Barber, to his wife, plaintiff, if living, the sum of $2,000.00.

Admits that the said Frank Barber died on the 5th day of June, 1910.

Admits that up to the time of his death the said Frank Barber had complied with all the conditions,

stipulations and requirements in said policy on his part to be performed by him, except in the particulars hereinafter affirmatively pleaded.

Admits that the plaintiff was the wife and is now the widow of Frank Barber.

Admits that since the death of Frank Barber the plaintiff has complied with all the requirements in said contract required of her.

Admits that demand has been made on the defendant for the sum of $2,000.00, and that payment thereof has been refused.

Admits that at the time of the issuance of said policy or contract and soon after the execution thereof the said Frank Barber deposited with the defendant the sum of $20.00, but denies that the same was received by the defendant and placed to the credit of Frank Barber, and denies that said sum or any part thereof has ever been retained by or is now retained by defendant, or that said sum, or any part thereof, is in its custody or under its control as a deposit or otherwise.

Denies that upon said deposit of $20.00 any interest has accrued or that the said deposit, or the interest thereon, was in the hands of or under the control of the defendant at the time of the death of Frank Barber for the benefit of Frank Barber or otherwise.

Admits that it has refused to pay the plaintiff the sum of $2,000.00, but denies that such refusal is vexatious or that it is liable to plaintiff for any sum by way of penalty because of such refusal.

And, having fully answered, defendant prays to go hence with its costs.

Further answering the petition, defendant alleges

it is a corporation organized under the laws of Connecticut and that on the 4th day of September, 1893, the said Frank Barber made a written and signed application to defendant for the policy or certificate sued on herein (a verified copy of which application is hereto attached, marked "Exhibit A"), and that in said application the said Frank Barber agreed as follows:

> "If I or my representatives shall omit or neglect to make any payment as required in respect of amount, place and time of payment by the conditions of such certificates, then the certificates to be issued hereon shall be null and void and all money paid thereon shall be forfeited to said company."

Defendant alleges that it received and accepted said application, and, on the faith of the agreement therein contained as above set forth, issued the policy or certificate sued on herein, which expressly refers to and makes said application a part of said certificate or policy, and by the terms of said policy it is expressly provided that it is issued in consideration of "the representations, agreements and warranties made in the application herefor, and of the admission fee paid; and of the sum of $10.00 on each $1,000.00 of the indemnity herein provided for, to be paid for said company, as herein required, to create a safety fund as hereinafter described, and of $3.00 per annum on each $1,000.00, for expense dues, to be paid as hereinafter conditioned, and of the further payment of all mortality calls proportioned to the indemnity herein provided for, levied against

the herein-named member to form a Mortuary Fund for the payment of all indemnity matured by deaths of members, which mortality calls, to be levied upon all the members, in the department wherein this certificate is issued whose certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity at the dates of such deaths, with due allowance for discontinuance of membership.

Defendant alleges that said certificate further provides:

> "2. The member agrees to pay said company, for expenses, dues of $3.00 per annum on each $1,000.00 indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; or by *pro rata* installments of the same, in advance, for periods of less than a year: And also agrees to pay said company, within thirty days from day on which notices bear date, all mortality calls determined as within set forth; the proceeds of which, less such charges as are herein prescribed and ten cents on each call for cost of collection, shall form the Mortuary Fund: And further agrees to pay said company during the first year of membership the sum of ten dollars on each $1,000.00 towards the Safety Fund, either in a single payment within sixty days from date hereof, or by equal installments thereof, monthly, during the first year of membership, commencing sixty days

from date hereof: In default of which payments towards the Safety Fund, said company may for this purpose increase said mortality calls by amounts equal to any such due and unpaid installments; and, while the whole or any portion of such required payments shall remain unpaid, said company may apply toward payment thereof any unapplied sum standing to the credit of this certificate: But if the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax; and the proceeds of such mortality calls shall be charged with the member's proportionate share of fees actually paid by the company for medical examinations made in the first year of the membership hereby granted. All of which payments are to be made directly to the Home Office of said company, and not to agents, who are unauthorized to receive them."

Defendant alleges that in said policy or certificate it is expressly provided that the indemnity agreed to be paid shall be payable out of the Mortuary Fund so to be created by assessments as above set forth, and not otherwise.

Defendant alleges that said policy further provides:

"3. The member further agrees and accepts this certificate upon the express condition that if either the annual dues, mortality calls, or safety fund deposit, as hereinbefore required, are not paid to said company on the day due, then this

certificate shall be null and void, and of no effect, and no person shall be entitled to damages or recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the safety fund. * * *''

Defendant further alleges that said policy provides:

"5. The quarter days for the payment of mortality calls shall be the first day of March, June, September and December in each year, notices of which will be dated and mailed thirty days before such dates. No mortality call to fall due on the first quarter day following the date of this contract can be made. A notice directed to the address of the member, or other person designated by the member, appearing at the time on the company's books, shall be a sufficient notice of any required payment, and a certificate of the secretary, supported by affidavit of the person whose duty it was to perform the service of such addressing and of mailing of notice in post office at Hartford shall be taken and admitted as conclusive evidence of such addressing and mailing and be admitted as conclusive proof of due notice to each and every person interested herein.''

Defendant alleges that Frank Barber elected to pay the dues of $3.00 per annum for each $1,000.00 of indemnity quarterly, in advance, and, from time to time after the issuance of said certificate, he paid his dues quarterly, in advance, and the mortuary assessments which were levied against him quarterly until January, 1910.

Defendant alleges that on the 29th day of January, 1910, it duly made and levied against the said Frank Barber, under said policy, an assessment known and designated as Quarterly Call No. 126, that said assessment, including the taxes thereon payable to the State of Missouri, amounted to $13.09; that said assessment was made according to the table of graduated mortality ratios given on said policy to form the mortuary fund for the payment of all indemnity matured by death; that said assessment was proportioned to the maximum indemnity named in said certificate, was levied against all the members holding similar certificates, and was determined by the ages of members and the aggregate indemnity at the dates of such deaths, with due allowance for the discontinuance of membership, and was made and levied in all respects as required by said policy.

Defendant alleges that said notice of said assessment was duly given to the said Frank Barber; that the same was dated the 29th of January, 1910, and was deposited in the post office at Hartford on said date directed to the address of said Frank Barber as it appeared on the books of the defendant at that time; that at the same time and in the same manner and by the same notice, it demanded of Frank Barber the payment of $1.50, the quarterly dues for the quarter ending May 31, 1910; that Frank Barber failed to pay the said dues or said assessment within thirty days from the date on which said notice bore date, that is to say, on or before March 1, 1910; that the defendant extended the time for the payment of said assessment until March 5th, 1910; that afterwards defendant agreed to accept payment of said dues and

assessment if paid on or before March 20th, 1910, and so notified said Frank Barber, but defendant alleges that the said Frank Barber failed and neglected to pay said mortality call, and failed to pay said dues either on or before March 1, 1910; March 5th, 1910, or March 20, 1910, and payment of the same has never been made, and that, by the terms and provisions of said policy and application, the failure of said Frank Barber to pay said assessment, as well as his failure to pay said dues, terminated said certificate or policy.

Defendant alleges that although the said Frank Barber lived until the 5th day of June, 1910, or for nearly four months after the forfeiture of the policy, by reason of the non-payment of the assessment and dues in March, 1910, he at no time considered said certificate in force, but at all times acquiesced in the forfeiture thereof, resulting from the non-payment of said mortality call or assessment, and abandoned all claims, rights or demands under said certificate or policy.

Defendant further alleges that the contract or certificate sued on is one of many similar certificates issued by the defendant to numerous other members of the Safety Fund Department, Men's Division, of the defendant company; that each of said certificates provided, as does the certificate sued on, for the levy and collection of assessments, the proceeds of which are to constitute the Mortuary Fund referred to in the certificate sued on, from which upon the death of the holder of any such certificate the indemnity provided for herein is to be paid; that the indemnity provided for in each of said certificates is payable only out of said Mortuary Fund and defendant is not otherwise liable for the indemnity provided for by said certifi-

cate; that under and by the terms of such certificate defendant is the trustee of said Mortuary Fund; that said certificates create an express trust as to such fund; members holding said certificates so long as they are in force and the members continue alive (and after the death of the members while the certificates are in force the beneficiaries designated therein) are the *cestuis que trust* of said Mortuary Fund; that said Mortuary Fund has always been maintained in the State of Connecticut; that said fund and the said trust under which it is held is subject to the control and direction of the courts of general jurisdiction of the State of Connecticut, and particularly of the Superior Court of New Haven County and the Supreme Court of Errors of the State of Connecticut; that the manner in which said Mortuary Fund and the trust under which it is held shall be administered has been the subject of adjudication by the courts of general jurisdiction of the State of Connecticut, to wit, by said Superior Court of New Haven County and the Supreme Court of Errors of the State of Connecticut in the case of Chas. A. Dresser *et al.* v. Hartford Life Insurance Company, which said courts have jurisdiction over this defendant and over said fund, and in which case said courts adjudicated and directed how the said Mortuary Fund should be administered; that said action was brought by one Charles H. Dresser, a member of said Safety Fund Department, and holding a certificate of membership similar to that sued on by the plaintiff in this case, which said action was brought by said Charles H. Dresser on his own behalf, as well as on behalf of others similarly situated, including this plaintiff, to which action this plaintiff was thereby made a party and whose rights were

therein fully adjudicated, and the decisions in which case are *res judicata* as to this plaintiff's rights in said Safety Fund and Mortuary Fund; that a copy of the decrees and judgments of said Superior Court of New Haven County are hereto attached, marked, respectively, Exhibits "B" and "C", and the opinion of the Supreme Court of Errors of the State of Connecticut referred to in said decrees will be found reported in 80 Conn. 681, to which reference is hereby made; that said Mortuary Fund and the trust thereby created is being administered by the defendant strictly in accordance with the terms of said certificate and in accordance with the directions and adjudications of said courts of Connecticut, as shown by said decrees and opinions; that under the terms of said certificates and under the terms of said trust as construed and adjudicated by said courts defendant is without authority to pay out of said Mortuary Fund the amount of any certificate of membership where, as in the case of Frank Barber, the member has failed or refused to pay the assessment levied against him to maintain said fund.

Defendant, for further answer, denies that the defendant has vexatiously refused to pay the amount sued for; denies that $500.00 is a reasonable attorney's fee; denies that plaintiff is entitled to any damages or attorney's fees, because defendant says that the statute of this state (section 7068) authorizing the imposition of damages and attorney's fees is unconstitutional and void because in violation of Section 10, Article I of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in violation of Section 30 of Article II and Section 10 of Article II

of the Constitution of Missouri, and because the construction thereof by the courts of this state constitutes a rule of judicial construction violative of said provisions of said State and Federal Constitutions, and because said section 7068, if applied to this case, and in its application to the facts of this case, denies the defendant due process of law as guaranteed to it by the said State and Federal Constitutions.

Wherefore, defendant shows to the Court that it is not liable to the plaintiff in this case and prays to be discharged with its costs.

REPLY.

Comes now the plaintiff in the above-entitled cause and for amended reply to the defendant's amended answer as amended to the plaintiff's amended petition herein denies each and every allegation in said amended answer as amended, contained and set forth.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

For further reply to the defendant's amended answer herein plaintiff states that the defendant, on the 8th day of July, 1910, stated to the plaintiff and then contended that the policy of insurance sued upon herein lapsed and was forfeited for the failure of Frank Barber to pay an assessment known and designated call No. 126, due March 1st, 1910, and was then canceled by the defendant for that reason and for no other reason; that the defendant did not then and there contend that said policy of insurance lapsed and was forfeited and was canceled by the defendant for the failure of Frank Barber to pay $1.50 quarterly dues or any amount for taxes, and

that thereby the defendant led the plaintiff to believe that for that reason and no other reason the defendant refused to pay plaintiff the amount of the policy sued upon herein; that at no time before the institution of this suit did the defendant contend or claim that the policy of insurance herein had lapsed and was forfeited for the non-payment of the sum of $1.50 or any other sum for quarterly dues, or any sum for taxes. That relying thereon, the plaintiff thereafter instituted this suit against the defendant, and has gone to much trouble and great expense in taking depositions and preparing the same for trial, and that by reason of the said statements, contentions and conduct of the defendant and things aforesaid, the plaintiff has been caused to go to much trouble and incur large expense in the institution and prosecution of this suit against the defendant, and that by reason thereof the defendant has waived any and all defenses pleaded by it herein wherein it claims that the policy of insurance sued upon herein had lapsed and was forfeited for the failure of Frank Barber to pay the sum of $1.50 or any other sum as quarterly dues or any sum as taxes and is now thereby estopped to make the defenses or assert that the policy of insurance sued upon herein was lapsed or forfeited for the failure of said Frank Barber to pay the sum of $1.50 quarterly dues or any other sum, or any sum as taxes, and can not now claim that said policy was rendered void or was forfeited by reason of the same.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

For further reply the plaintiff says that the de-

fendant's plea in its said amended answer wherein it challenges the constitutionality of Section 7068, Revised Statutes of Missouri of 1909, authorizing the imposition and recovery of damages and attorneys' fees for vexatious refusal to pay loss under a life insurance policy, and wherein it is alleged that said statute is unconstitutional and void because in violation of Section 10 of Article I of the Constitution of the United States and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and also in violation of Section 30 of Article II, and Section 10 of Article I of the Constitution of Missouri, is not made in good faith, but for the purpose of depriving the Kansas City Court of Appeals of the State of Missouri of jurisdiction on an appeal in this case; and it is an attempt to raise an alleged Federal question, which, in truth and fact, does not exist, because both the Supreme Court of Missouri and the Supreme Court of the United States have held said section and similar acts constitutional and have decided that they were not in violation of either the state or Federal constitution, and said plea is made for the purpose of giving the Supreme Court of the State of Missouri, and the Supreme Court of the United States jurisdiction on appeal or on writ of error in this cause and to vexatiously delay and annoy the plaintiff; and, if permitted, will perpetrate a legal fraud against the jurisdiction of the Kansas City Court of Appeals and a legal fraud on the jurisdiction of the Supreme Court of Missouri, and the Supreme Court of the United States.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

POLICY SUED UPON.

The portions of the policy sued upon pertinent to the issues involved are as follows:

"In consideration of the representations, agreements and warranties made in the application herefor, and of the admission fee paid, and of three dollars per annum on each $1,000 of the indemnity herein provided for, for expense dues, to be paid as hereinafter conditioned, and of the further payment of all mortality calls proportioned to the said indemnity, levied against the herein-named member to form a mortuary fund for the payment of all indemnity matured by deaths of members, and to create a safety fund as hereinafter described, which mortality calls, to be levied upon all the members in the department wherein this certificate is issued whose certificates are in force at the date of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity of the dates of such deaths, with due allowance for discontinuance of membership (one-third of the proceeds of such mortality calls to be applied toward said safety fund until the sum of ten dollars on each $1,000 indemnity aforesaid shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon) does hereby issue this certificate of membership in its Safety Fund Department to Frank Barber (herein called the member) of **St. Louis** County,

of **City of St. Louis,** State of **Missouri,** with the following agreements:

"That ninety days from the receipt by the president or secretary of said company of satisfactory proofs, in accordance with forms furnished upon notice of death and with full information as to the manner and cause of the death of the herein-named member while this certificate is in force, all the conditions hereof having been conformed to by the member, upon presentation and surrender of this certificate properly receipted, there shall be due and payable, out of the aforesaid mortuary fund and not otherwise, the indemnity of two thousand dollars (less the balance unpaid, if any, of the stipulated contribution to said safety fund, with fifty per cent added, together with the unpaid installments of annual expense dues and any mortality or other charge against the member payment of which is not matured), to his wife, Rosa Barber, if living, otherwise to his legal representatives. All such payments to be made at the home office of said company in lawful money of the United States.

"That said company will deposit said sum of ten dollars, when received, with the trustee, named in the contract with it (of which a copy is printed hereon), as a safety fund in trust for the uses and purposes expressed in said contract; and shall make a semi-annual division of the net interest received therefrom by it *pro rata* among all the holders of certificates in force in said department at such times, who shall have contributed five years prior to the date of any such

division their stipulated proportion of said fund, by applying the same to the payment of their future dues and assessments; and that, whenever said fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said company in like manner as the interest."

Judgments in the case of Dresser v. Hartford Life Insurance Company, as exhibits to defendant's answer.

Charles H. Dresser *et al.*
vs.
The Hartford Life Insurance Company *et al.*
} New Haven County, Superior Court, March 23, 1910.

JUDGMENT.

This action brought by the plaintiffs in their own behalf and for the benefit of other creditors and certificate holders in a similar situation as themselves against The Hartford Life Insurance Company, the Security Company, George E. Keeney, Lewis Sperry, Rienzi B. Parker, Charles H. Bacall, Arthur F. Eggleston, Lewis E. Gordon, James H. Knight, Raymond G. Keeney and Andrew Gordon, by complaint dated October 19, 1906, alleging that, prior to 1880, there had been devised a plan or form of assessment life insurance known as the "Safety Fund" plan, and that under said plan persons insuring therein were to pay in addition to admission fees, medical examination fees and other expense dues, payments of $10 on each $1,000 of insurance to make up a safety fund; that said safety fund was to be depos-

ited with the Security Company, defendant, as trustee, and as often as said fund reached an amount sufficient to purchase $1,000, par value, of United States bonds, said trustee was to make investments of said fund therein; and that when the purposes and objects of said safety fund in the hands of said trustee had been fulfilled in accordance with the terms of the plan as set forth, said safety fund was to belong absolutely to the certificate holders, and that said Hartford Life Insurance Company was to have no interest therein except in its application for the benefit of its certificate holders in accordance with the terms of the plan; that in the year 1880 the defendant, The Hartford Life Insurance Company, adopted said plan of insurance and announced to the public and to prospective certificate holders through its officers, managers and agents that it would do business thereunder, and, for the purpose of inducing prospective certificate holders to take out certificates, published and caused to be published, and issued various circulars and other writings and literature descriptive of said plan of insurance; that the plaintiffs relied upon the representations and statements contained in said circulars and literature in taking out their certificates; that said company in the year 1899 for fraudulent purposes wrongfully ceased issuing certificates under said plan or form of insurance, and after said date, and after said safety fund had reached the sum of one million dollars, said insurance company asserted the right and intention to levy upon the certificate holders for mortuary dues and assessments and for expense dues, without limit as to number or amount, and to levy and demand such dues and

assessments after the outstanding insurance in said Safety Fund Department should be reduced to below one million dollars, and that said safety fund did not belong to the certificate holders but belonged to said insurance company, and that said insurance company continues to make said claim; and alleging fraudulent diversions of moneys by the defendant, The Hartford Life Insurance Company, and the individual defendants from the funds and property of the assessment department of said insurance company, and illegal, excessive and unnecessary collections, and fees and assessments from the certificate holders in said department, and mismanagement of the safety fund by the defendants by reason of which large losses had resulted to the safety fund in the hands of the trustee, as appears fully in said complaint, and claiming for relief, first, that the true amount of said safety fund be ascertained and declared and adjudicated to be the property of the safety fund certificate holders, and that The Hartford Life Insurance Company has no property therein, and that it be declared and adjudicated that such is the true meaning of said certificates of insurance, or that said certificates be reformed so as to convey said meaning; and praying also for a receiver, an accounting, a forfeiture of the moneys and benefits received by the defendant, The Hartford Life Insurance Company, from its certificate holders, an injunction against The Hartford Life Insurance Company from making its claims in respect to the Safety Fund, damages in the amount of One Million Dollars, and for such other and further relief as in equity might pertain, came to this Court on the first Tuesday of

November, 1906, when all the parties appeared; thence by pleadings as on file to September 16, 1908, when the issues between the plaintiffs and the defendants, The Hartford Life Insurance Company and the individual defendants, were closed by the plaintiffs' reply to the answer of The Hartford Life Insurance Company filed on said date; thence said cause came by continuance and by pleadings as on file to January 21, 1909, when the defendant, The Hartford Life Insurance Company, moved the Court for an order that the issue or issues formed by paragraph 21 of the answer of The Hartford Life Insurance Company to paragraph 29 of the plaintiffs' complaint and paragraph 10 of the plaintiffs' reply thereto be heard and determined before any other issue in said cause was tried; thence to January 28, 1909, when the Court after fully hearing the parties by counsel, granted said motion and ordered that the issues made by paragraph 21 of the answer of the defendant, The Hartford Life Insurance Company to paragraph 29 of the plaintiffs' complaint and paragraph 10 of the plaintiffs' reply thereto be heard and determined before any other issue in said cause was tried; thence said cause was continued to May 27, 1909, when all the parties except the Security Company, defendant, appeared and proceeded to the trial of the last-named issue.

The Court having heard the parties with their witnesses on the last named issue finds the same in favor of the plaintiffs.

Whereupon it is adjudged and decreed that whenever the amount of outstanding insurance in the assessment or Safety Fund Department of The Hart-

ford Life Insurance Company shall be reduced by death, lapse or other causes, to the amount of One Million Dollars, the Safety Fund in the hands of the trustee is to be distributed among such of the plaintiffs named in the complaint herein as shall have survived said period, and such other certificate-holders in the Men's Division of the said department of said Insurance Company whose certificates are in force at that time, in the proportion that the face value of their respective certificates bears to the total amount of the outstanding insurance in said division of said Safety Fund Department; provided, however, that none of the contingencies or situations provided for in said contract, "Exhibit B" for the distribution of said Safety Fund shall have arisen before that time, but such provisions in said Exhibit "B" shall remain in full force and effect unimpaired by this decree. And as the time when, in the ordinary course of events, the amount of outstanding certificates will be reduced to One Million Dollars is so remote, and that it will ever occur is so uncertain, no other relief under the general prayer should be granted at this time on this issue.

Shumway, J.

Charles H. Dresser *et al.*
vs.
The Hartford Life Insurance Company *et al.*

New Haven County, Superior Court, March 23, 1910.

JUDGMENT.

This action was brought by the plaintiffs in their own behalf and for the benefit of other creditors

and certificate holders in similar situation as themselves against the defendants named in the complaint, claiming that prior to 1880 there had been invented a plan of assessment life insurance which was designated as the Safety Fund Plan, and published and generally known under that name, the principal features of which plan are described as follows: Each person applying for insurance under the plan was to pay an admission fee of $8 for $1,000; $12 for $2,000; $15 for $3,000; $18 for $4,000; $20 for $5,000; and $40 for $10,000, and a medical examination fee estimated at $3, which medical examination fee was to be paid to the physician; also to pay annually, for the sole purpose of paying the expense of said insurance on said Safety Fund Plan, $3 for each $1,000 of insurance, also to pay as mortuary payments or assessments to meet death losses an amount graduated according to the policyholder's age, when the assessment was made, the amount of his policy, and the total amount of insurance or indemnity in force with the company. Furthermore, each member was to pay $10 on each $1,000 of his insurance to make up a "Safety Fund." This Safety Fund was to be deposited with the defendant, The Security Company of Hartford, Connecticut, as trustee. As often as the receipts for said fund amounted to a sufficient sum to purchase $1,000 par value of United States bonds, such trustee was to make investments of such funds therein and register the same in its name as trustee of the Safety Fund of said insurance company. The earnings of this Safety Fund after it reached $300,000, and all contributions to said fund after it reached $1,000,000

in United States bonds, par value, were to be divided up among the outstanding cetificate-holders whose certificates had been in force five years, in proportion to the face amount of their certificates. In case of failure of any certificate-holder to make payments in accordance with his agreement, his interest in said Safety Fund and all his claims were to cease; and when the face amount of outstanding certificates was less than $1,000,000 it should be divided among the outstanding certificate-holders in proportion to the face amount of their certificates. And further said sum was to belong absolutely to the certificate-holders and the company was to have no interest whatsoever therein, except in its application for the benefit of the certificate-holders in accordance with the terms of said plan. And claimed that at some time in the year 1880 the defendant, the Hartford Life Insurance Company, adopted said plan and issued certificates in accordance with the terms thereof; and that the plaintiffs and a large number of others held certificates issued in accordance therewith and similar to Exhibit "B" annexed to said complaint; and claimed that in pursuance of certain purposes for its own benefit said insurance company offered various inducements to induce the certificate-holders in its Safety Fund department to surrender their certificates in said department and to take out in place thereof policies in the stock department of said company, and that said insurance company had diverted from the moneys and property of said Safety Fund department large sums of money to use and benefit of itsself and the managers and stock-

holders of its stock department, and made other allegations, as will appear from said complaint, and asked relief as therein set forth. Said action came to this Court on the first Tuesday of November, A. D. 1906, and thence by continuance to the first Tuesday of January, 1907, when and where the parties appeared and were at issue on demurrers as on file, and the Court on the 11th day of October, 1907, sustained said demurrers and adjudged that the complaint was sufficient, and that the defendants recover the costs, and thereupon the plaintiffs appealed from said judgment to the Supreme Court of Error to be held at Bridgeport within and for the Third Judicial District on the first Tuesday of October, A. D. 1907, and said Court having heard said case rendered judgment on June 9, 1908, finding error and overruling said demurrers in part and sustaining said demurrers in part, and remanding said cause to this Court for further proceedings as will appear in said judgment; and thereupon the defendant, the Security Company, filed its answer as on file, and the other defendants filed their answers as on file, and the case was heard on the demurrer of the plaintiffs to the answer of the Security Company, and the Court on the 17th day of December, 1908, rendered its decision sustaining the demurrers to the first, second and third defenses of said answer, and overruling the demurrer to the fourth defense; and the case thereupon came by regular continuances to this Court on the ? day of January, 1909, when the Court made an order that the issues raised by the 21st paragraph of the answer of the Insurance Company to the 29th para-

graph of the complaint, and paragraph 10 of the plaintiffs' reply to said answer, be heard and determined before any other issues were tried, and thence said case came by regular continuance to the 27th day of May, A. D. 1909, when the parties were at issue as on file, and thereupon a hearing was had on said issues, but the said The Security Company did not appear, and the Court (Judge Shumway presiding) after said hearing filed a memorandum of decision as on file under date of July 21, 1909, and on March 23, 1910, formerly entered judgment as on file to conform to the date of this judgment; and thence said cause came to this Court on the 10th day of November, A. D. 1909, when all the parties duly appeared and were heard on the other issues in said case not disposed of by the aforesaid judgment, and the Court having heard the parties finds certain issues in favor of the plaintiffs and certain others in favor of the respective defendants, as herein set forth, and at the request of the plaintiffs specially sets forth the facts upon which the judgment is founded as follows:

The Safety Fund plan of insurance which the certificates in this case were issued, and with which they comply in terms, is substantially as follows: Each person applying for insurance under the plan was to pay an admission fee of $8 for $1,000; $12 for $2,000; $15 for $3,000; $18 for $4,000; $20 for $5,000; and $40 for $10,000, and a medical examination fee estimated at $3, which medical examination fee was to be paid to the physician; also to pay annually expense dues of three dollars for each $1,000 of insurance, also to pay as mortuary payments or assess-

ments to meet death losses an amount graduated according to the policy-holder's age, when the assessment was made, the amount of his policy, and the total amount of insurance or indemnity in force with the company. Furthermore, each member was to pay $10 on each $1,000 of his insurance to make up a Safety Fund. This Safety Fund was to be collected by the defendant, The Hartford Life Insurance Company, and by it deposited with the defendant, The Security Company of Hartford, Connecticut, as trustee. As often as the receipts for said fund amounted to a sufficient sum to purchase $1,000 par value of United States bonds, such trustee was to make investments of such funds therein and register the same in its name as trustee of the Safety Fund of said Insurance Company until said fund so invested would amount to one million dollars par value of United States bonds. The earnings of this Safety Fund after it reached $300,000 and all contributions to said fund after it reached $1,000,000 in United States bonds, par value, were to be paid over by said Security Company to said Insurance Company and by it be divided up among the outstanding certificate-holders who had contributed five years prior to the date of any such division their stipulated proportion or payments to said fund, in proportion to the face value of their certificates.

In case of failure of any certificate-holders to make payment in accordance with his agreement, his interest in said Safety Fund and all his claims thereon ceased. When the face amount of outstanding certificates becomes reduced by death, lapse or other cause to the amount of one million dollars, the dispo-

sition of said Safety Fund in such case was adjudicated by this Court in the judgment referred to above rendered by this Court, Judge Shumway presiding, as appears therein.

The Security Company and the Hartford Life Insurance Company on December 31, 1879, and before the Hartford Life Insurance Company commenced the issue of such certificates, executed an agreement, a copy of which is incorporated in each certificate and is found incorporated in Exhibit "B" in this case, under which agreement the Security Company assumed the management of the Safety Fund in accordance with the terms of the contract contained in the certificate, and with the plan as thus set forth, and continued the management of such business in accordance with the terms of the agreement down to a period in 1890.

At the solicitation and by the procurement of the Hartford Life Insurance Company, the Legislature of 1889 passed a private act, approved April 10, 1889, which is as follows:

> "Resolved by this Assembly: That the Security Company, a corporation located in Hartford, be and it is hereby authorized to invest the funds known as the Safety Fund, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between said companies dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders of certificates of membership in said Hartford Life and Annuity Insurance Company,

in such other securities, in addition to United States bonds, as the life insurance companies of this State are by law authorized to invest in, instead of being compelled to invest all said funds in United States bonds as specified in said contract; provided, such investments of said funds in other securities than United States bonds, shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided further, that nothing in this resolution shall be so construed as in any way to vary, alter or change the purposes, conditions or stipulations of such trust as set forth in said contract, except as to the kind of securities in which the same may be invested."

Thereafter the Security Company did not comply with the provisions of the contract executed in December, 1879, in regard to investments. It never accumulated a fund of one million dollars, par value, of United States bonds, although it did accumulate a fund which in June, 1894, amounted to one million dollars value of securities. Relying in good faith on the provisions of the act of 1889 above quoted, in the year 1890 it sold United States bonds amounting to $501,000 par value then held by it under the terms of said trust agreement and received therefor $97,366.85 over and above the par thereof, which United States bonds had been purchased at a premium of $115,689.50, making the whole cost of the said bonds $616,689.50. Said Security Company thereupon in accordance with the provisions of said act of 1889

but in violation of said contract with said certificate-holders made in 1879 as aforesaid, invested the proceeds of such sale, together with other Safety Fund payments thereafter received, in such other securities as are required for the investment of insurance companies under the laws of this State, but not in United States bonds as provided in said agreement. The amount of money so received and invested, together with the premiums paid, including the premiums paid on the United States bonds so converted, amounted to much more than one million dollars, to wit, upwards of $1,090,000.

Said act of 1889 above stated has been ruled by this Court on demurrer to the answer of the defendant, the Security Company, to be unconstitutional as impairing the obligation of the contract embodied in the trust agreement with the certificate-holders.

As a result of such investments in other securities losses have been incurred, and the actual value of said fund now remaining in the hands of the Security Company on account of said Safety Fund is somewhat less than one million dollars. Many of said securities are not such as are authorized by the law of this State concerning the investments by trustees, as appears by the disclosure of the Security Company on file in this case, and some of these securities have today no market value and are paying no income.

This Court however finds that the illegal investments made by the Security Company under the provisions of the private act of the General Assembly of 1889 were not made to further any purpose of its own, but were made in reliance upon said act which

was passed in the supposed interest of the beneficiaries, or certificate-holders; that such illegality differs from illegality knowingly or negligently indulged in; that the loss which has fallen upon the Security Company from such illegal investments of the Safety Fund has its source in misfortune and not in culpability.

By reason of the change so made in the investments of said Safety Fund, there was received as income by said Security Company down to the commencement of this action, $315,828.41 in excess of what the income would have been had said United States bonds not been sold and all investments of said Safety Fund had been made by the trustee only in United States bonds.

Practically the only issue of United States bonds in the market for sale from January, 1890, to March, 1895, were the four per cent. bonds maturing April 1, 1907. The market price of said bonds in January, 1890, was 126½ of par, and the price thereof gradually fell from time to time until March, 1895, when a new issue was made of four per cent. bonds to mature in 1925. The market price of said four per cent. bonds of 1907 then ranged for 111 to 112¾ of par, and the market price of said four per cent. bonds of 1925 ranged from 119⅛ to 120½. The Security Company was not required to establish a sinking fund. The agreement makes no reference to such a fund, although United States bonds were then (December, 1879) at a small premium of about three per cent.

The situation presented by the beneficiaries was not analogous to that of a life tenant and remain-

derman, but was more nearly like a beneficiary entitled to the interest, and eventually to the principal of a fund. It was as important for the early certificate-holders to receive all the income as that a sinking fund should be established to lighten the possible burden that might fall on certificate-holders at the maturity of the bonds, if the $10 payments then received were applied to the purchase of bonds to restore the Safety Fund to $1,000,000, par value, United States bonds. A continuation of the business was then contemplated with a constant flow of $10 payments into the Security Company from new certificate-holders. By having no sinking fund, the total net income went to the beneficiaries instead of a part of it into an investment to await the maturity of the bonds, thus in effect the beneficiaries became the holders of a sinking fund, since if at maturity more than $1,000,000 was necessary to procure $1,000,000 par value, of United States bonds, it would come from them in diminished returns from $10 payments, or in case (as happened) the business was not continued, then equitably from diminished payments of income until the fund was restored. As a matter of fact, at the maturity of the bonds of 1907, United States bonds paying two per cent. could have been purchased nearly at par.

Under the investment policy pursued after 1889, a much larger sum arising from unused $10 payments was returned, and much earlier, to the use of certificate-holders, and also a much larger amount of income was so returned, than would have been returned if the investments had been made in United States bonds.

By the terms of said trust agreement above referred to, it appears that the Security Company agreed with the Hartford Life Insurance Company and with the certificate-holders, that "the necessary expenses connected with the management of said fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinafter mentioned bonds, together with the cost of the stationery and postage used in replying to requests for information of the condition of said fund, and the actual cost of any judicial action needed to determine the legal status of said fund. All other expenses to be included in and covered by such reasonable charges as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof."

On the date of the execution of said trust agreement, the Security Company by its president and secretary wrote a letter to the president of the Insurance Company, and the same day the Insurance Company by its president and secretary wrote a similar letter to the president of the Security Company, in both of which it was stated that it was agreed that the compensation referred to in said contract should be as follows: "The rate to be one per cent. on all sums up to and not exceeding $200,000 but in no year to be less than $500.00; and from $200,000 to $400,000 to remain at $2,000 per annum; and on all amounts exceeding $400,000 to be one-half of one per cent. per annum."

This was done before any certificate of membership had been issued by the Insurance Company and

before any opportunity had been had to determine the amount of time and labor involved in the execution of the trusteeship.

Thereafter, at the end of each six months, the Security Company computed its compensation under its interpretation of said agreement with the said Insurance Company, and submitted said compensation to said Insurance Company for its approval, and, if so approved, it withdrew said amount and took the same as its compensation as trustee for the preceding six months.

No complaint was ever made of this compensation by any certificate-holder down to the commencement of this suit, but it did not appear that the certificate-holders knew of the rate or amount of compensation which said trustee had received or was receiving.

The amount of income collected under said trust agreement by the Security Company was $970,175.83 down to September 18, 1908, and the Security Company, acting under its interpretation of the terms of said letter, received and credited to itself as compensation, with the consent of said Insurance Company, and deducted from said income, the amount of $116,741.16, being more than twelve per cent. of the income, and then paid over to the Insurance Company for credit on the assessments of the certificate-holders in accordance with the terms of the contract, the balance of the income after deducting its compensation and other expenses, the latter amounting in all to over fifteen thousand dollars.

Since 1892 the stated compensation of the trustee has been calculated and received on amounts which in each year exceeded one million dollars.

The ordinary compensation of a trustee for holding and managing trusts consisting of personal property is five per cent. of the income. Under the contract, the Security Company, down to March, 1899, in addition to taking care of and managing said Safety Fund, and turning over the income to the Hartford Life Insurance Company semi-annually, in pursuance of the contract, kept an account of the ten dollar payments with the names and addresses of the certificate-holders from whom said ten-dollar payments were received. Since January 1, 1891, the fair value of the trustee does not exceed eight per cent. of the gross income of the fund for each year, but its charges for such services have largely exceeded that amount. The amount of such excess, together with simple interest thereon calculated from the close of each year, when such charge was made, amounts to $40,046.36.

And this Court further finds that said Security Company was not obligated under the terms of said trust agreement with the Hartford Life Insurance Company and with the certificate-holders, to maintain a sinking fund;

That the act of the General Assembly of 1889, to which reference is made above, was passed without notice to, or the consent of, the holders of certificates of insurance issued by said Insurance Company, and was unconstitutional and void; that if the Safety Fund is now invested in United States bonds an annual income of less than two per cent. will be received on the amount so invested, and that if said fund is now invested in securities (other than United States bonds) in which the law of this State author-

izes trustees to invest trust funds, an approximate annual income of four per cent. will be received on the amount invested, and that it is within the power of this Court of Equity to protect the said certificate-holders from the great and unnecessary loss and waste of approximately twenty thousand dollars per year, which loss and waste will result if said Safety Fund is now invested in United States bonds.

It was claimed by the plaintiffs that the defendants were levying assessments unnecessary in amount and number for their own wrongful purposes. The Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate above set forth, quarterly, and the proceeds of such assessments when received by said Insurance Company were paid into and credited to the mortuary fund described in the contract of insurance. The Hartford Life Insurance Company did not levy assessments unnecessary in amount or number. It appeared, however, that the allowance made for discontinuance of membership, although made in good faith, often exceeded the actual amount necessary to cover the deficiency in payments arising from such discontinuances, and from that source margins of excess of payment arose from time to time consisting of the difference between the aggregate amount actually received by said Insurance Company from such quarterly assessment and the amount needed to pay the losses for the corresponding quarterly period. It also appeared that although the Company in practice levied assessments to cover the full amount of the face value of the certificates for each death during the previous quarter, they deducted an actual

payment from the face of such certificates a certain proportion of the assessment which would have been due from the certificate-holder had he survived the quarter, which sum is proportioned to the portion of such quarter which had elapsed at the time of the death of such certificate-holder, and there was, therefore, a margin arising from this circumstance between the amount of the losses paid and the amount of the losses assessed for. These margins accumulated from time to time in the hands of the Hartford Life Insurance Company in its mortuary fund, have always been and are now in constant use in the prompt payment of losses in advance of the receipt of the moneys to pay the same from the regular assessments, by which receipts the said fund is constantly reimbursed. Such accumulation of margins, although in constant use, are capable of exact determination in amount, and now amount to many thousands of dollars.

The plaintiffs claimed it was improper and wrongful to accumulate these margins and to carry this balance in said mortuary fund, and claimed that said balance of margins should be distributed among the outstanding certificate-holders, but it is held that it is proper and reasonable that the Company should hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the Company should hold more than the amount of one average quarterly assessment for the previous year.

Said fund belongs to the certificate-holders and is held in trust for them, and the Hartford Life Insurance Company has the right to hold the same, to

the extent above stated, in trust for said certificate-holders and for application to the settlement of death claims, and said fund should be ultimately distributed in the settlement of death claims and as hereinafter provided, before said certificates in accordance with their provisions are extinguished and the Safety Fund distributed in accord with the judgment of this Court, Judge Shumway presiding, above referred to.

It is provided in the certificates that they are payable solely from the mortuary fund. It is also provided by the certificates and by the trust agreement hereinbefore referred to, that on the distribution of the Safety Fund among the certificate-holders, all liability on the certificates shall thereupon cease and determine.

It was claimed by the plaintiffs that the expense dues received by the Hartford Life Insurance Company could be levied only for the purpose of paying the expenses of the Safety Fund Department of the Hartford Life Insurance Company, and that as the Company ceased to issue new certificates and transact new business at a period not later than 1899, the Hartford Life Insurance Company was not entitled to said expense dues after that period, and that the plaintiffs were entitled to an account for the amount of such expense dues received after the payment of the expenses actually incurred by the Hartford Life Insurance Company in connection with the business. It has been ruled by the Supreme Court of this State, and is so held by this Court, that said three dollar expense dues did not become a part of the funds of the Safety Fund Department, but that they belong

to the Insurance Company without accountability to the certificate-holders, and that said Company is entitled to collect the same so long as there is any outstanding certificate of insurance. The plaintiffs made no claim at the time of the trial for any such account of said expense dues, and made no claim for relief on account of the collection or receipt of the same, and the plaintiffs are not entitled to any such relief.

It was also claimed that the Insurance Company had from time to time diverted moneys and property of the Safety Fund Department from such Safety Fund Department to the Stock Department without right.

The plaintiffs after submitting evidence on the trial in support of said claim withdrew their demand therefor and admitted that the circumstances appearing to indicate such diversion arose from the difference in the method of keeping accounts appearing by their reports to the Insurance Department, and it is found that the Insurance Company has not wrongfully diverted such sums from the Safety Fund Department to the uses of the Stock Department.

It was claimed by the plaintiffs that the defenddants other than the corporations, as officers and agents of said Insurance Company, took their offices with knowledge of the various wrongful and fraudulent acts recited in the complaint, and had accepted the benefits of said fraudulent transactions. But it is held that said defendants, namely, George E. Keeney, Lewis Sperry, Rienzi B. Parker, Louis E. Gordon, Everett J. Lake, James H. Knight, Ray-

mond G. Keeney, Andrew Gordon, Arthur F. Eggleston and Charles H. Bacall became connected with said defendant Insurance Company and took their positions in said Company at a date subsequent to the acts complained of and recited in said complaint, and have not participated in and are not guilty of any fraudulent acts or transactions in connection with the management of the Safety Fund Department of said Insurance Company.

Plaintiffs are not entitled to an account, a receiver, damages, or other relief except as herein granted.

Defendants Charles H. Bacall and Arthur F. Eggleston died after the commencement of this action and before any judgment was rendered therein.

Whereupon it is adjudged and decreed, that said mortuary fund of the Men's Division arising from the excess of the amount received for quarterly assessments over the amount necessary for the payment of losses for said quarter, as above described, or from any other source, together with all income or interest thereon, belongs to the certificate-holders in the Men's Division of the Safety Fund Department, and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department.

Further, that in the future, any excess in said fund above the average of the four preceding quarterly assessments in said Men's Division of the Safety Fund Department of said Company shall be distributed to the certificate-holders in diminution of assessments by crediting and applying such excess on account of the next succeeding assessment.

Also, that when the amount of outstanding certificates of insurance in the Men's Division of the Safety Fund Department falls to the face amount of one million dollars and the Safety Fund is distributed among the holders of said certificate, the balance, if any, of said mortuary fund remaining in the hands of the Hartford Life Insurance Company, shall be distributed *pro rata* among the certificate-holders whose certificates are outstanding at that time.

That said Security Company as such trustee within eighteen months from and after July 1, 1910, shall sell and dispose of all present securities and investments of said Safety Fund, other than those which it shall be willing to hold as securities authorized by law, for trust investments, and shall invest the proceeds of such sales in such securities (other than United States bonds) in which trustees are allowed to invest under the law of the State of Connecticut.

That said Security Company, as such trustee, may and shall continue to hold as a part of said Safety Fund, any and all securities (other than United States bonds) in which said fund is now invested, and which constitute investments in which trustees are authorized by law to invest, and which said trustee shall decide to retain as a part of said Safety Fund.

That all of said trust securities which shall be retained by said Security Company in said Safety Fund, shall be valued and so held at their market value at the date of this judgment, and that all securities hereafter purchased by said trustee as a part of the investments of said Safety Fund shall

be taken and held as a part of said Safety Fund at their cost price.

That as to all bonds or obligations payable at a fixed time in the future which shall be so retained or hereafter purchased by said trustee as a part of said Safety Fund, the Security Company shall create and carry a sinking fund out of the income of said respective securities for the amortization of the premiums or bonuses above par, which there may be in the valuation or cost of said securities.

In case the present market value of all the securities which are now held by said trustee and which it shall retain as a part of said Safety Fund, together with the cost price of all securities purchased by said trustee under the provisions of this judgment, shall not equal the sum of one million dollars on or before January 1, 1912, then said Security Company, out of its own fund, shall furnish and pay into the principal account of said Safety Fund a sum sufficient to make said fund up to one million of dollars, which sum so paid in (if any) shall be invested by said trustee in securities in which trustees shall then be authorized by the law of this State to invest.

That said trustee shall have the right and power to sell and transfer from time to time any securities which it may hold in said fund, and shall invest the proceeds of said sales in other securities in which said trustees shall be authorized to invest.

That said Security Company credit to the income account of the Men's Division of the Safety Fund Department, the sum of forty thousand and forty-six dollars and thirty-six cents ($40,046.36), being

the excess of the amount hitherto received by it over the compensation which this Court has allowed, with interest thereon as above described.

That the Security Company hold said sum of forty thousand, forty-six and 36/100 dollars ($40,046.36) as a separate fund until the conversion of the securities as provided above, and if under this judgment the Security Company is compelled to make up from its own funds any of the principal of the Safety Fund, then the Security Company is authorized and directed to apply such sum of $40,046.36, with the accumulated interest realized thereon from the date thereof, in whole or in part to reimburse said Security Company, so far as may be, for the sum so made up by it. If after the conversion of the securities and the reestablishment of the Safety Fund as provided above, the whole or any portion of said $40,046.36 remains unapplied for the purpose of so reimbursing said Security Company, the Security Company is directed to re-transfer it to the regular income account of the Safety Fund.

That when the conversion and purchase of securities is completed as hereinbefore authori.. the Security Company shall file in this Court a report or account of its proceedings in detail, sworn to by one of its executive officers, and which shall show an investment of one million dollars as the principal of said Safety Fund, and the payment of any excess under this judgment, to the income account of said Safety Fund.

That the said Security Company from this time henceforth shall be entitled to charge and receive for its services as such trustee a sum equal to eight

per cent. of the gross income received from said investment, to be paid in semi-annual payments of four per cent. each.

In addition to said eight per cent. of the gross income as compensation, and in addition to such expenses as are authorized by said trust agreement of December 31, 1879, said trustee shall be entitled to be reimbursed for all necessary legal expenses incurred in the protection, and collection of any obligation which shall at any time be held under the authority of this judgment as a part of the principal of said Safety Fund.

It is further adjudged that this litigation is of such a character and the results of such value to all the present certificate-holders who as a class are interested in this litigation that an allowance should be made from the accounts of the safety fund in aid of the plaintiffs in the payment of the expenses, including the attorney's fees, involved in the conduct of this litigation.

Whereupon it is further adjudged that said Security Company pay to Henry Stoddard, Talcott H. Russell, and John K. Beach, attorneys for the plaintiffs, on or before the expiration of ten days after the judgment in this case shall become final, the sum of twenty-five thousand dollars ($25,000), which sum shall be paid out of the principal of said Safety Fund now in its hands, which shall be applied by the plaintiffs and their said counsel to aid in the settlement of the expenses and attorneys' fees of the plaintiffs in this action, for which the said plaintiffs shall give to said Security Company a receipt certifying to said payment in accordance

with this judgment, which certificate shall be carried by said trustee as a part of said principal of the Safety Fund, for reimbursement as hereinafter provided, and said payment shall not constitute a deficiency *pro tempo* in the principal of said fund.

It is also adjudged that said trustee shall semi-annually pay out of and from the income received from the investments of the principal of said fund, the sum of one thousand dollars, and shall pay the same into the principal fund, and shall endorse said payment upon said certificate originally given under this judgment for the payment of said sum of twenty-five thousand dollars ($25,000) which payment, when so endorsed, shall constitute a repayment *pro tanto* of said sum, and said trustee shall continue to make said semi-annual repayments until said sum of twenty-five thousand dollars ($25,000), has been so repaid, and said Security Company shall be under no other obligation or liability to repay said sum of twenty-five thousand dollars ($25,000) or any part thereof.

It is also adjudged that said Security Company shall conform to all of the agreements contained in said trust contract of December 31, 1879, other than the one with reference to the investment of said trust funds, as to which this judgment shall control; and that the defendant, the Hartford Life Insurance Company, keep said Security Company correctly informed of the names and addresses of the certificate-holders in the Men's Division of the Safety Fund Department, and of the number and amount of such certificates in accordance with the terms of the Safety Fund contract, and furnish said Security

Company such other information as may be required in accordance with the terms of said contract.

It is also adjudged that no costs shall be taxed by or in favor of any party hereto.

Curtis, J.

CHARTER OF HARTFORD LIFE INSURANCE COMPANY.

The following is a part of Section 3 of the charter of the Hartford Life Insurance Company, as set out on page 70 of the record:

> "Sec. 3. The office of said Company shall be located at Hartford, and all the affairs of said corporation shall be managed and controlled by a board of not less than seven directors (the number of said directors to be determined by the by-laws of said company), who shall be chosen from among and by the stockholders, which choice shall be made by a majority of the votes cast; and said directors shall hold office for one year, and until others are chosen in their stead; * * *"

Levy of Assessment 126—When, How, and by Whom Made.

The defendant's evidence as to the levy of Assessment 126, by the testimony of Mr. Lawrence, its secretary, as shown on page 254 of the record, is as follows:

"Q. When was assessment 126 levied and by whom? A. It was levied as of date of January 29, 1910. It was actually computed prior to that date

of January 29, 1910, and levied by the officers of the company.

Q. By what officers? A. By the president and secretary and probably one of the vice-presidents.

Q. Who was president? A. Mr. George E. Keeney.

Q. Who was secretary? A. Mr. T. F. Lawrence.

Q. Is that yourself? A. Yes.

Q. Who was vice-president? A. At that time there were two, Mr. Raymond G. Keeney and Mr. Lewis G. Gordon.

Q. Were they both present at the levying of this assessment? A. No, I think Raymond G. Keeney was; I am not sure; I said probably one of the vice-presidents.

Q. Did you keep a record of that meeting of your officers? A. No.

Q. What day was that held? A. I couldn't state today on what date it was held, probably the 5th or 6th of January. It was held as soon as the information necessary for the officers to have to levy this assessment was at their disposal.

Q. Where was it held? A. At the president's office of the Hartford Life Insurance Company.

Q. In this room? A. Yes."

Notice of Assessment 126.

The following is notice of Assessment 126 which plaintiff in error claims to have mailed to Frank Barber (Rec., p. 125):

EXHIBIT M.

HARTFORD LIFE INSURANCE COMPANY,
Hartford, Conn., January 29th, 1910.

Special Notice of Quarterly Call No. 126.

Your next Quarterly Call will fall due and be payable June 1, 1910.

Frank Barber,
4201 Pleasant St.,
St. Louis, Mo.

2—174416

This Call which will be due Mar. 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list), Benefits, $322,378.48 and expenses on your policy, as follows:

For Mortality Call	$13.09
For Quarterly Dues to June next	1.50
Credit	$14.59
Dividend to be applied if payment be made	1.40
Amount Due	$13.19

Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and

all payments thereon will become forfeited and void.

Return this notice with remittance payable to

Hartford Life Insurance Company.

Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

See over for Special Notice.

SPECIAL NOTICE.

If the payment of the above Quarterly Call is not received at this Office on or before *Mar. 5, 1910, the last day allowed for payment in the above notice, second notice will be mailed to the policy-holder by registered letter, giving until *Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Mar. 5, 1910, will be obliged to pay this fifty cents fee in order to have the policy unconditionally reinstated.

After *Mar. 20, 1910, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of reinstatement.

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*If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

Accompanying this notice was a printed list giving the names of 119 persons, who had died, and amount of their policy, making a total of $322,378.48, and as shown by Exhibit "N", between pages 130 and 131 of the records, which is as follows:

EXHIBIT N.

THE HARTFORD LIFE INSURANCE COMPANY.

The following members having died, the claims of their beneficiaries are included in the regular Quarterly Call No. 126, notice of which accompanies this list:

Members.	Location.	Date of Death.	Amt. Ins.
Austin, Moses S.	Bridgeport, Conn.	Feb. 13, 1907	$ 3,000
Saunders, Benj. F.	Salt Lake City, Utah.	July 26, 1909	10,000
Dye, Otis M.	Springfield, So. D.	Aug. 18, 1909	10,000
Barnes, K. H.	Stowe, Vt.	Aug. 19, 1909	1,000
Smith, M. W.	Montclair, N. J.	Aug. 20, 1909	1,000
Divine, John F.	Wilmington, N. C.	Aug. 21, 1909	5,000
Loveridge, Royal I.	Bridgeport, Conn.	Aug. 22, 1909	1,000
Morgan, Chas. H.	Lake City, Ia.	Aug. 22, 1909	2,000
Routzahn, D. C.	Virden, Ill.	Aug. 22, 1909	2,000
Lagare, Thos. K.	Atlanta, Ga.	Aug. 22, 1909	3,000
Black, Sam'l McC.	St. John, N. B.	Aug. 23, 1909	2,000
Wood, H. D.	Pinehurst, Ga.	Aug. 23, 1909	1,000
Crawley, F. D.	London, England	Aug. 28, 1909	1,000
Nolting, C. H.	Indianapolis, Ind.	Aug. 30, 1909	1,000
Davey, Thos. H.	Dover, N. J.	Aug. 30, 1909	1,000
Zech, John	Newport, Ky.	Sept. 1, 1909	2,000
Calvin, T. F.	Joplin, Mo.	Sept. 1, 1909	1,000
Cohen, Leopold H.	New York, N. Y.	Sept. 3, 1909	8,000
Sweeney, Patrick	Cleveland, Ohio	Sept. 3, 1909	1,000
Creighton, Jas. A.	Ennis, Texas	Sept. 3, 1909	2,000
Berkele, Henry	New York, N. Y.	Sept. 4, 1909	2,500
Bisping, Fred	Chicago, Ill.	Sept. 4, 1909	1,000
Jarrett, Henry D.	Springfield, Mo.	Sept. 4, 1909	2,000
Pickett, B. F.	Waterbury, Vt.	Sept. 5, 1909	1,000
Abler, Simon	Akron, Ohio	Sept. 6, 1909	1,000
Stevens, Chas. E.	Rutland, Vt.	Sept. 6, 1909	4,000
Strong, C. H.	Sterling, Kans.	Sept. 6, 1909	2,000
McCabe, Wm. L.	Lawrence, Mass.	Sept. 7, 1909	1,000
Green, C. J.	Dallas, Texas	Sept. 7, 1909	5,000
Patton, John M.	Olympia, Wash.	Sept. 7, 1909	2,000
Albritton, A. A.	Kinston, N. C.	Sept. 8, 1909	1,000
Myers, Jacob A. D.	Max Meadows, Va.	Sept. 9, 1909	2,000
Lester, W. A.	Mankato, Minn.	Sept. 10, 1909	1,000
Bezanson, Wm. H.	Somerville, Mass.	Sept. 11, 1909	2,000
Neubecker, Alex	Cleveland, Ohio	Sept. 11, 1909	2,000
Berggren, Emil	Malden, Mass.	Sept. 12, 1909	1,000
Sandhoff, Henry	Cleveland, Ohio	Sept. 13, 1909	1,000
Eaton, Albert C.	Stafford Spgs., Conn.	Sept. 13, 1909	1,000
Wallace, Hawson H.	Amarillo, Texas	Sept. 13, 1909	6,000
Eppel, Adam	Philadelphia, Pa.	Sept. 15, 1909	1,000
Love, Lucien	Coleman, Texas	Sept. 16, 1909	2,000
Rielley, Jas. P.	Cleveland, Ohio	Sept. 16, 1909	1,000
King, Wm. H.	Attleboro, Mass.	Sept. 17, 1909	1,000
Meinhard, Isaac	New York, N. Y.	Sept. 18, 1909	10,000
Marsh, Cyrus C.	Union City, Pa.	Sept. 19, 1909	4,000
Bright, Wm.	St. Louis, Mo.	Sept. 19, 1909	5,000
Botsford, Alfred M.	Bridgeport, Conn.	Sept. 20, 1909	1,000
Bunn, James B.	Hamburg, Ark.	Sept. 20, 1909	1,000
Raymond, Lewis	Waterbury, Conn.	Sept. 22, 1909	2,000
Fahey, Patrick	Wallingford, Conn.	Sept. 22, 1909	2,000
Allen, Wm. J.	Dallas, Texas	Sept. 22, 1909	3,000
Hasler, Bernard	Taftville, Conn.	Sept. 23, 1909	500
Jones, Albert F.	Hartford, Conn.	Sept. 23, 1909	1,000
Harrison, Moses C.	Fredericton, N. B.	Sept. 23, 1909	2,000

Members.	Location.	Date of Death.	Amt. Ins.
Houghton, Edw. T.	Springfield, Mass.	Sept. 23, 1909	2,000
Wasem, Jacob	Shrewsbury, Mo.	Sept. 24, 1909	2,000
Becker, Fred'k A.	St. Louis, Mo.	Sept. 26, 1909	2,000
Moodie, R. B.	Dayton, Ohio	Sept. 28, 1909	2,000
Van Vechter, Giles F.	Cedar Rapids, Ia.	Sept. 29, 1909	5,000
White, C. I.	Cresco, Iowa	Sept. 30, 1909	2,000
Allen, G. H.	Claude, Texas	Sept. 30, 1909	2,000
Cavagna, Peter	Cincinnati, Ohio	Oct. 1, 1909	5,000
Nichols, Jerome B.	Plantsville, Conn.	Oct. 1, 1909	2,000
Barton, Jr., H. A.	Dalton, Mass.	Oct. 1, 1909	2,000
Loux, John	Lorain, Ohio	Oct. 3, 1909	2,000
McLaughlin, David	LaFayette, Ind.	Oct. 3, 1909	4,000
Roberts, Edw. L.	Broadford, Va.	Oct. 3, 1909	878.48
Graf, Louis	Brooklyn, N. Y.	Oct. 4, 1909	5,000
Perkins, Wm. T.	Orange, N. J.	Oct. 4, 1909	1,000
Pfeuffer, Geo.	Elizabeth, N. J.	Oct. 4, 1909	1,000
McPheeters, Thomas.	St. Louis, Mo.	Oct. 5, 1909	3,000
Colbert, John	Portland, Conn.	Oct. 6, 1909	1,000
Chambers, Alfred E.	Petersburg, Ky.	Oct. 7, 1909	5,000
Hull, P. H.	Hartford, Conn.	Oct. 8, 1909	1,000
Leggett, Wm. T.	Pittsburg, Pa.	Oct. 10, 1909	5,000
Toale, P. P.	New York, N. Y.	Oct. 11, 1909	5,000
Patterson, Stephen W.	Bridgeport, Conn.	Oct. 12, 1909	1,000
Rivest, Ugel E.	Holyoke, Mass.	Oct. 12, 1909	1,000
Buchanan, Thos.	Cincinnati, Ohio	Oct. 12, 1909	5,000
Post, Caleb	Jerseyville, Ill.	Oct. 15, 1909	5,000
Kelmly, John W.	Hillis, Ga.	Oct. 15, 1909	1,000
Cahill, Edw.	Norwalk, Conn.	Oct. 17, 1909	1,000
Bradley, John A.	Sedalia, Mo.	Oct. 17, 1909	3,000
Cowing, Ransom F.	Lakewood, N. Y.	Oct. 19, 1909	2,000
Penette, Henry	Chazy, N. Y.	Oct. 19, 1909	1,000
Gleisner, Michael	Brucetown, Va.	Oct. 21, 1909	1,000
Brown, Lewis J.	Waterloo, Iowa	Oct. 22, 1909	1,000
Woerner, Daniel	Epworth, Ill.	Oct. 22, 1909	2,000
Miller, Wm.	Aurora, Ill.	Oct. 22, 1909	1,000
Cox, F. Marcellus.	Washington, D. C.	Oct. 23, 1909	5,000
Davis, John	Los Angeles, Cal.	Oct. 24, 1909	2,000
Minor, Chas. K.	Buffalo, N. Y.	Oct. 25, 1909	2,000
Pfetzing, Justus	Havana, Ill.	Oct. 25, 1909	5,000
Howard, Oliver Otis.	Burlington, Vt.	Oct. 26, 1909	10,000
Hunt, Marcus A.	Cincinnati, Ohio	Oct. 26, 1909	5,000
Oyer, Chas. H.	Lacona, N. Y.	Oct. 26, 1909	1,000
Berwanger, Benj.	Far Rockaway, N. Y.	Oct. 27, 1909	5,000
Dettmann, Jno. F. D.	Cleveland, Ohio	Oct. 28, 1909	1,000
Kespohl, Julius C.	W. Quincy, Ill.	Oct. 28, 1909	2,000
Carlisle, Wm. C.	New Decatur, Ala.	Oct. 29, 1909	2,000
Prager, Moses	Savannah, Ga.	Oct. 29, 1909	5,000
Moss, Ulysses F.	Louisville, Ky.	Oct. 29, 1909	7,000
McGinley, Hugh	Wilmington, Del.	Oct. 30, 1909	1,000
Fisher, Albert W.	Boston, Mass.	Oct. 31, 1909	5,000
Quinn, Pat'k J.	Bridgeport, Conn.	Oct. 31, 1909	2,000
Gilligan, John	Charlotte, N. C.	Nov. 1, 1909	1,000
Taylor, Riley T.	Baltimore, Md.	Nov. 3, 1909	3,000
Carson, David U.	Commerce, Ga.	Nov. 3, 1909	1,000
Weiland, Chas.	Milwaukee, Wis.	Nov. 3, 1909	2,500
Meroney, Wm. A.	San Francisco, Cal.	Nov. 4, 1909	2,000
Doak, T. J.	Woodbury, Tenn.	Nov. 4, 1909	2,000
Buchel, Otto	Cuero, Texas	Nov. 4, 1909	5,000
Allen, Wm. H.	New York, N. Y.	Nov. 6, 1909	5,000
Whiton, Erastus	W. Somerv'e, Mass.	Nov. 6, 1909	1,000
Standish, Wm. O.	Montpelier, Vt.	Nov. 6, 1909	2,000
Stewart, Chas. A.	Chicago, Ill.	Nov. 7, 1909	2,000
Jenner, John W.	Mansfield, Ohio	Nov. 8, 1909	15,000
Hatcher, J. E.	Cordele, Ga.	Nov. 9, 1909	1,000
Lockwood, Frank J.	Randolph, N. Y.	Nov. 9, 1909	1,000

As to the time the claim as shown in Exhibit "N," for which Assessment 126 is alleged to have been levied, were paid, and the amount of funds on hand at the time of the making of Assessment 126, Mr. Lawrence, the secretary of the company, testified (Rec., pp. 220-237):

"Q. You testified yesterday that assessment 126 was made to cover a number of death claims which you have stated were set out in Exhibit "N". Have you any original memorandum of releases or receipts, or otherwise, to show the exact date of the payment of those claims or any of them? A. We have records and checks and receipts.

Q. How many, if any, do you know of the claims contained in Exhibit "N" were paid before you sent out the notices for assessment 126? A. I couldn't tell you that without consulting the records.

Q. About how many? A. Any answer I might give to that question would be a guess.

Q. I would like for you to give your best recollection, that is what I want? A. Well, the only way I could answer that question would be to go down and make an examination of the death claim registers and find out the dates on which those various death claims were paid.

Q. Don't you know as a matter of fact that a number of them had been actually paid and settled before you sent out the notices for assessment 126? A. Yes, I know that.

Q. What proportion? A. I could only tell you as a guess.

Q. Turn to Moses S. Austin (Mr. Lawrence has produced claim register). The date of the death is

February 13, 1907. State when that claim was paid. A. That claim was paid September 29, 1909; $3,000.

Q. Please turn to your record and state at what date the claim of Benjamin F. Saunders was paid and the amount paid. A. That claim was paid December 24th, 1909; $10,000.

Q. Please state at what date the claim of Otis M. Dye was paid and the amount paid. A. That claim was paid November 2, 1909; $10,000.

Q. Please state at what date the claim of K. H. Barnes was paid and the amount. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of M. W. Smith was paid and the amount paid. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of John F. Devine was paid and the amount paid. A. That claim was paid December 6, 1909; $5,000.

Q. Please state at what date the claim of Royal L. Loveridge was paid and the amount paid. A. That claim was paid September 22, 1909; $1,000.

Q. Please state at what date the claim of Chas. H. Morgan was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of D. C. Routzhan was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Thos. K. Legare was paid and the amount paid. A. The correct name is Thomas K. Legare and that claim

Q. Please state at what date the claim of Samuel was paid December 6, 1909; $3,000.

McBlack was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of H. D. Wood was paid and the amount paid. A. That claim was paid October 26, 1909; $1,000.

Q. Please state at what date the claim of F. D. Crawley was paid and the amount paid. A. That claim was paid December 27, 1909; $1,000.

Q. Please state at what date the claim of C. H. Nolting was paid and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Thos. H. Lavey was paid and the amount paid. A. That claim was paid December 6th, 1909; $1,000.

Q. Please state at what date the claim of T. F. Calvin was paid and the amount paid. A. That claim was paid December 29th, 1909; $1,000.

Q. Please state at what date the claim of Leopold H. Cohen was paid and the amount paid. A. That claim was paid November 22, 1909; $8,000.

Q. Please state at what date the claim of Patrick Sweeney was paid and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Jas. A. Creighton was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Henry Berkele was paid and the amount paid. A. That claim was paid November 17, 1909; $2,500.

Q. Please state at what date the claim of Fred Bishop was paid and the amount paid? A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Henry

D. Jarrett was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of B. F. Pickett was paid and the amount paid. A. That claim was paid October 27, 1909; $1,000.

Q. Please state at what date the claim of Simon Abler was paid and the amount. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Chas. E. Stevens was paid and the amount paid. A. That claim was paid November 4th, 1909; $4,000.

Q. Please state at what date the claim of C. H. Strong was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Wm. L. McCabe was paid and the amount paid. A. That claim was paid October 14th, 1909; $1,000.

Q. Please state at what date the claim of C. J. Green was paid and the amount paid. A. That claim was paid December 3, 1909; $5,000.

Q. Please state at what date the claim of John M. Patton was paid and the amount paid. A. That claim was paid December 14th, 1909; $2,000.

Q. Please state at what date the claim of A. A. Albritton was paid and the amount paid. A. That claim was paid December 14, 1909; $1,000.

Q. Please state at what date the claim of Jacob A. D. Meyers was paid and the amount paid. A. That claim was paid December 6th, 1909; $2,000.

Q. Please state at what date the claim of W. A. Lester was paid and the amount paid. A. That claim was paid December 23, 1909; $1,000.

Q. Please state at what date the claim of Wm. H.

Bezanson was paid and the amount paid. A. That claim was paid December 4, 1909; $2,000.

Q. Please state at what date the claim of Alex. Neubecker was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Emil Beggren was paid and the amount paid. A. That claim was paid November 19th, 1909; $1,000.

Q. Please state at what date the claim of Henry Sandhoff was paid and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Albert C. Eaton was paid and the amount paid? A. That claim was paid November 3, 1909; $1,000.

Q. Please state at what date the claim of Hawson H. Wallace was paid and the amount paid. A. That claim was paid December 30, 1909; $6,000.

Q. Please state at what date the claim of Adam Eppel was paid and the amount paid. A. That claim was paid December 1st, 1909; $1,000.

Q. Please state at what date the claim of Lucien Love was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of Jas. J. Reilley was paid and the amount paid. A. That claim was paid December 1st, 1909; $1,000.

Q. Please state at what date the claim of Wm. H. King was paid and the amount paid. A. That claim was paid November 17, 1909; $1,000.

Q. Please state at what date the claim of Isaac Meinhard was paid and the amount paid. A. That claim was paid December 4, 1909; $10,000.

Q. Please state at what date the claim of Cyrus

C. Marsh was paid and the amount paid. A. That claim was paid December 29, 1909; $4,000.

Q. Please state at what date the claim of William Bright was paid and the amount paid. A. That claim was paid December 1st, 1909; $5,000.

Q. Please state at what date the claim of Alfred M. Botsford was paid and the amount paid. A. That claim was paid December 9, 1909; $1,000.

Q. Please state at what date the claim of Jas. B. Bunn was paid and the amount paid. A. That claim was paid November 29, 1909; $1,000.

Q. Please state at what date the claim of Lewis Raymond was paid and the amount paid. A. That claim was paid November 2, 1909; $2,000.

Q. Please state at what date the claim of Patrick Fahey was paid and the amount paid. A. That claim was paid November 2, 1909; $2,000.

Q. Please state at what date the claim of Wm. J. Allen was paid and the amount paid. A. That claim was paid December 3, 1909; $3,000.

Q. Please state at what date the claim of Bernard Hassler was paid and the amount paid. A. That claim was paid December 4, 1909; $500.

Q. Please state at what date the claim of Albert F. Jones was paid and the amount paid. A. That claim was paid October 22, 1909; $1,000.

Q. Please state at what date the claim of Moses C. Harrison was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Edw. T. Houghton was paid and the amount paid. A. That claim was paid February 16, 1910; $2,000.

Q. Please state at what date the claim of Jacob

Wasen was paid and the amount paid. A. That claim was paid October 5, 1909; $2,000.

Q. Please state at what date the claim of Frederick A. Becker was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of R. B. Moodie was paid and the amount paid. A. That claim was paid October 13, 1909; $2,000.

Q. Please state at what date the claim of Giles F. VanVechter was paid and the amount paid. A. That claim was paid October 28, 1909; $5,000.

Q. Please state at what date the claim of C. I. White was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of G. H. Allen was paid and the amount paid. A. That claim was paid December 28, 1909; $2,000.

Q. Please state at what date the claim of Peter Cavagna was paid and the amount paid. A. That claim was paid February 8, 1910; $5,000.

Q. Please state at what date the claim of Jerome B. Nichols was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of H. A. Barton, Jr., was paid and the amount paid. A. That claim was paid October 21, 1909; $2,000.

Q. Please state at what date the claim of John Loux was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of David McLaughlin was paid and the amount paid. A. That claim was paid December 1st, 1909; $4,000.

Q. Please state at what date the claim of Edw. L.

Roberts was paid and the amount paid. A. That claim was paid December 30, 1909; $1,878.48.

Q. Please state at what date the claim of Louis Graf was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Wm. T. Perkins was paid and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Geo. Pfeuffer was paid and the amount paid. A. That claim was paid July 6, 1910; $1,000.

Q. Please state at what date the claim of Thos. McPheters was paid and the amount paid. A. That claim was paid November 29, 1909; $3,000.

Q. Please state at what date the claim of John Colbert was paid and the amount paid. A. That claim was paid October 25, 1909; $1,000.

Q. Please state at what date the claim of Alfred E. Chambers was paid and the amount paid. A. That claim was paid November 29, 1909; $5,000.

Q. Please state at what date the claim of P. H. Hull was paid and the amount paid. A. That claim was paid January 17, 1910; $1,000.

Q. Please state at what date the claim of William T. Leggett was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of P. P. Toale was paid and the amount paid. A. That claim was paid January 6, 1910; $5,000.

Q. Please state at what date the claim of Stephen W. Patterson was paid and the amount paid. A. That claim was paid December 4, 1909; $1,000.

Q. Please state at what date the claim of Ugel E.

Rivest was paid and the amount paid. A. That claim was paid December 28, 1909; $1,000.

Q. Please state at what date the claim of Thos. Buchanan was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Caleb A. Post was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of John W. Kelmly was paid and the amount paid. A. The name should be Helmly instead of Kelmly, and the claim was paid March 3, 1910; $1,000.

Q. Please state at what date the claim of Edw. Cahill was paid and the amount paid. A. That claim was paid December 6, 1909; $1,000.

Q. Please state at what date the claim of John A. Bradley was paid and the amount paid. A. That claim was paid December 29, 1909; $3,000.

Q. Please state at what date the claim of Ransom F. Cowing was paid and the amount paid. A. That claim was paid December 6, 1909; $2,000.

Q. Please state at what date the claim of Henry Penette was paid and the amount paid. A. That claim was paid December 20, 1909; $1,000.

Q. Please state at what date the claim of Michael Gleisner was paid and the amount paid. A. That claim was paid February 17, 1910; $1,000.

Q. Please state at what date the claim of Lewis J. Brown was paid and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of Daniel Woerner was paid and the amount paid. A. That claim was paid February 7, 1910; $2,000.

Q. Please state at what date the claim of William Miller was paid and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of F. Marcellus Cox was paid and the amount paid. A. That claim was paid February 28, 1910; $5,000.

Q. Please state at what date the claim of John Davis was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Charles K. Minor was paid and the amount paid. A. That claim was paid December 6, 1909; $2,000.

Q. Please state at what date the claim of Justus Pfetzing was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Oliver Otis Howard was paid and the amount paid. A. That claim was paid, $5,000 on November 22, 1909, and $5,000 November 20th, 1909. The two certificates were to different claimants, I suppose.

Q. Please state at what date the claim of Marcus A. Hunt was paid and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Charles H. Oyer was paid and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Benjamin Berwanger was paid and the amount paid. A. That claim was paid November 16, 1909; $5,000.

Q. Please state at what date the claim of Jno. F. D. Bettmann was paid and the amount paid. A. That claim was paid January 14, 1910; $1,000.

Q. Please state at what date the claim of Julius

C. Kespohl was paid and the amount paid. A. That claim was paid December 29, 1909; $2,000.

Q. Please state at what date the claim of Wm. C. Carlisle was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Moses Prager was paid and the amount paid. A. That claim was paid December 31, 1909; $5,000.

Q. Please state at what date the claim of Ulysses F. Moss was paid and the amount paid. A. That claim was paid February 19, 1910; $7,000.

Q. Please state at what date the claim of Hugh McGinley was paid and the amount paid. A. That claim was paid December 31, 1909; $1,000.

Q. Please state at what date the claim of Albert W. Fisher was paid and the amount paid. A. That claim was paid March 10, 1910; $5,000.

Q. Please state at what date the claim of Patrick J. Quinn was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of John Gilligan was paid and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Riley T. Taylor was paid and the amount paid. A. That claim was paid December 30, 1909; $3,000.

Q. Please state at what date the claim of David U. Carson was paid and the amount paid. A. That claim was paid February 28, 1910; $1,000.

Q. Please state at what date the claim of Chas Weiland was paid and the amount paid. A. That claim was paid December 30, 1909; $2,500.

Q. Please state at what date the claim of William

A. Meroney was paid and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of T. J. Doak was paid and the amount paid. A. That claim was paid December 29, 1909; $2,000.

Q. Please state at what date the claim of Otto Buchel was paid and the amount paid. A. That claim was paid February 18, 1910; $5,000.

Q. Please state at what date the claim of Wm. H. Allen was paid and the amount paid. A. That claim was paid December 30, 1909; $5,000.

Q. Please state at what date the claim of Erastus Whiton was paid and the amount paid. A. That claim was paid December 14, 1909; $1,000.

Q. Please state at what date the claim of William O. Standish was paid and the amount paid. A. That claim was paid February 24, 1910; $2,000.

Q. Please state at what date the claim of Chas A. Stewart was paid and the amount paid. A. That claim was paid February 18, 1910; $2,000.

Q. Please state at what date the claim of John W. Jenner was paid and the amount paid. A. That claim was paid December 29, 1909; $15,000.

Q. Please state at what date the claim of J. E. Hatcher was paid and the amount paid. A. That claim was paid February 9, 1910; $1,000.

Q. Please state at what date the claim of Frank J. Lockwood was paid and the amount paid. A. That claim was paid February 28, 1910; $1,000.

Q. If I have not made a mistake in the account, all of these claims except fifteen were paid before the sending out of the notice of this assessment. Now, where did the company get the funds to pay those

claims? A. Why, the claims were paid out of the mortuary fund, and the funds in the mortuary fund were collected by assessment on the members by the death losses.

Q. Now, you didn't have any of assessment 126 in your hands before you sent out the notices, did you? A. We did not receive any of it before we sent out the notice.

Q. So that the company had some funds in its hands that were sufficient to pay and did pay all of those claims except the ones indicated as paid after the notice? A. Yes; those claims were paid out of the mortuary fund, as all claims are paid in the men's division of the safety fund department.

Q. Do you recall now the exhibit that showed the condition of the mortuary fund on December 31, 1909? A. There are two exhibits that show that, MM and II.

Q. That mortuary fund had been reduced on the date of December 31, 1909, by the payment of these claims that you have indicated were paid before that date? A. Yes; they had been paid out of the mortuary fund.

Q. Now, after the payment of all the claims that you say were paid before December 31, 1909, what was the amount or balance left in the mortuary fund for the purpose of paying death claims? A. Seventy-four thousand odd dollars. I can give you the exact amount if you will let me look at the exhibit: $74,938.92.

Q. As a matter of fact, when the notices were sent out for this assessment there was sufficient money in the mortuary fund to pay every death claim listed

in this Exhibit N, was there not? A. No, there was not.

Q Well, how much did it lack of being sufficient to pay the claims listed? A. About $250,000.

Q. As I understand from your testimony you had actually paid all but about 15 of those claims before December 31, 1909, out of funds in your hands, is that correct? A. That is right.

Q. Then, how did it take $250,000 more to pay those 15 claims? A. I didn't say it did.

Q. Did it? A. No; it didn't to pay the unpaid ones, but you didn't ask me the question that way. You asked me if there wasn't enough money in the mortuary fund on the date of the notice, which was January 29th, to pay all of the claims listed there which was $352,000, and there was not.

Q. What I aimed to say to you, after you had paid so many of them up to December 31st, didn't you actually have enough money as a balance to pay these often fifteen claims at the time you sent this out? A. I couldn't answer that because I have not before me the balance in the mortuary fund, January 29th; the records only show the unpaid claims that there were on December 31st and the amount in the mortuary fund December 31st.

Q. I understood you to testify on December 31st you actually had a balance in the mortuary fund, something over $74,000? A. That is right.

Q. If, as a matter of fact, you had paid all the death claims listed in Exhibit N except fifteen before December 31st, 1909, then the balance on hand of over $74,000, as testified to by you, was sufficient to pay the other fifteen, was it not? A. Yes, if we had

deemed it advisable to pay those claims and if papers had been completed so that we could pay them.

Q. What I mean is, you actually had funds in your hands sufficient to pay them? A. Yes, if in the judgment of the officers it seemed best to pay them.

Q. How many kinds of funds have you with reference to the men's safety department, and I mean, of course, how many had you on December 31st, 1909, that is the time I am inquiring about now? A. Five, not separating the stipulated premium funds.

Q. What did you call them? A. The mortuary fund, the stipulated premium fund, the advanced payment fund, the dividend fund, and the tax fund.

Q. From what source did the money that constituted the mortuary fund on that date come? A. From the assessments on the members to pay death losses.

Q. Did any of it come from accumulations and interest? A. Yes, and from the interest on the bank balances to which I testified this morning.

Q. You have referred to an exhibit which you claim showed the condition of the mortuary fund as of date December 31st, 1909. A. Yes, Exhibits II and MM.

Q. From this exhibit I notice that you state that on December 31st, 1909, in the men's mortuary fund was $74,938.92. A. That is right.

Q. Then you deduct from that death claims, $166.67, leaving a balance of $74,772.25? A. That is right. The death claim of $166.67 was a death claim overdue and unpaid because the beneficiary was missing. The death claim had been assessed for and collected and it was charged as a liability against the funds, and the balance in the mortuary fund was reduced by that amount.

Q. Did you ever pay this $166.67; has it since been paid? A. It has.

Q. Where was this money on December 31st, 1909? A. Most of it was in the Hartford National Bank, the First National Bank, the State Bank, of Hartford, Connecticut.

Q. It was to the account of the Hartford Life Insurance Company? A. The safety fund department.

Q. At that time had you collected the interest due upon moneys from the Security Company? A. Yes, December 31st, 1909, we received from the Security Company interest and accretions on the safety fund.

Q. Is that included in this money? A. No, sir; it should not be, that is the mortuary fund you have there; that is the dividend account.

Q. How much interest did you receive from the Security Company about December 31st, 1909? A. Twenty thousand five hundred-odd dollars.

Q. On that date that was available to pay death losses, was it not? A. No, sir; it was not. If you will look at Exhibit "FF" you will note that the balance in the dividend account on December 31st, 1909, was $19,447.39, although on that date we received from the Security Company twenty thousand five hundred-odd dollars, that balance in the dividend account on that date was not applicable to the payment of death losses, but could only be used in accordance with the terms of the contract in dividends in reduction of the next assessment. That is provided in the trustee's contract, a copy of which is printed and made a part of each certificate.

Q. You had it on hand to reduce the amount of the assessment that much? A. Yes, and as I testified,

$19,020.70 of that balance on that date was apportioned as dividends on call 126 due March 1st.

Q. You also had a mortuary fund that you call the women's mortuary fund of $84,155.38 on hand? A. We did, that fund being applicable only to the payment of death losses in the women's division of the safety fund department, as expressly provided in the contracts of the women's division.

Q. You mean by that, that is your construction? A. I mean by that, that is the contract.

Q. But you will have to excuse me. I didn't ask you anything about the contract. I asked you as to the amount you had on hand. You did have that sum of money? A. Yes, sir; that is right.

Q. Where was that money? A. On deposit in banks. It was the balance of the men's mortuary fund.

Q. That was to the account of the Hartford Life Insurance Company? A. Yes, safety fund deposit.

Q. Now, what is this item that you call stipulated premium of $39,685.89? A. Well, that item is the balance in the stipulated premium account; that is, balances that accumulated on stipulated premium policies. In that balance are the legal reserve on some legal reserve policies of the stipulated premium department, to which reference has heretofore been made in this deposition, and the surplus on the form 3½ policies, of the deposits made by the form 3½ policy-holders, to which reference has heretofore been made in this testimony, and dividend surplus on the form 4 policies, and surplus on some other stipulated premium policies where they made their payments and paid their own mortality.

Q. Did those seven-year contracts or certificates

enter into this? A. Yes, part of that balance is a balance on account of the form 4 policies.

Q. In whose hands was that money? A. In banks in Hartford.

Q. To whose account? A. Account of the Hartford Life Insurance Company.

Q. How long had you had that money? A. That balance had been created by the payment of premiums on these stipulated premium policies, and there was a balance left after all disbursements had been made, and those payments had been made for a period extending from 1894 to December 31st, 1909.

Q. About what per cent of this money was derived from these seven-year certificates? A. About 70 per cent, that is, roughly speaking; I couldn't tell you exactly without consulting the records.

Q. Did any of that come from these $2.00 deposits which were made each year? A. Not one cent of it.

Q. Did any of it come from interest on that money? A. Yes; the interest on that money was credited to that account and remained in the stipulated premium account. By "that money" I refer to the stipulated premium balance.

Q. When you wanted to make out and send out notices of assessments you never took into consideration the fact that you had sufficient money on hand to pay the claims, did you? A. Why, no; there never being enough money on hand to pay all the claims and keep the safety fund department intact.

Mr. Morrow: As the gentlemen insist on the objection, I will not read the next question and answer.

Q. In other words, you assess and send out notices

to collect money to replenish your funds and not to pay death claims? A. That is right. The contract provides that we shall levy assessments to create a mortuary fund for the payment of death losses and that death losses shall be paid from the mortuary fund and not otherwise.

Q. In this particular instance, assessment 126, as a matter of fact, you did send out notices for money not as an assessment to pay death claims but to replenish your fund and also to pay death claims? A. No; we levied an assessment for certain death claims, the proceeds of that assessment to go into the mortuary fund for the payment of death claims.

Q. Almost all of those death claims had been paid before the assessment? A. In the case of call 126 as shown by the record.

STATUTE OF MISSOURI.

Section 7068 of the Revised Statutes of Missouri, 1909, is as follows:

> "Sec. 7068. **Damages, When Recoverable.**—In any action against any insurance company to recover the amount of any loss under a policy of fire, life, marine or other insurance, if it appear from the evidence that such company has vexatiously refused to pay such loss, the Court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not exceeding ten per cent, on the amount of the loss and a reasonable attorney's fee, and the Court shall enter judgment for the aggregate sum found in the verdict."